



---

# **Governmental Operations Committee**

**Monday, April 17, 2006  
1:00 - 2:00 PM  
Morris Hall**

**Allan Bense  
Speaker**

**David Rivera  
Chairman**

# Committee Meeting Notice

## HOUSE OF REPRESENTATIVES

Speaker Allan G. Bense

(AMENDED 4/13/2006 4:05:03PM)

Amended(1)

### Governmental Operations Committee

**Start Date and Time:** Monday, April 17, 2006 01:00 pm

**End Date and Time:** Monday, April 17, 2006 02:00 pm

**Location:** Morris Hall (17 HOB)

**Duration:** 1.00 hrs

#### Consideration of the following bill(s):

HB 651 Secondhand Dealers by Kottkamp  
HB 675 CS Public Records and Public Meetings by Pickens  
HB 775 CS Psychologist Specialties by Roberson  
HB 911 CS Use of State Facilities as Emergency Shelters by Bullard  
HB 1117 Public Records by Greenstein  
HB 1223 Florida Retirement System by Machek  
HB 1285 Public Records Exemptions by Attkisson  
HB 1369 Public Records by Evers  
HB 1421 Department of Public Safety by Needelman  
HB 1451 Public Records by Gannon  
HB 1469 CS Public Records by Grant

#### Consideration of the following bill(s) with proposed committee substitute(s):

Public Records -- PCS for HB 1563

NOTICE FINALIZED on 04/13/2006 16:05 by TUCK.SHIRLEY



## HOUSE OF REPRESENTATIVES STAFF ANALYSIS

**BILL #:** HB 651                      Secondhand Dealers  
**SPONSOR(S):** Kottkamp and others  
**TIED BILLS:**                              **IDEN./SIM. BILLS:** SB 694

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1) Criminal Justice Committee	6 Y, 0 N	Ferguson	Kramer
2) Business Regulation Committee	18 Y, 0 N	Livingston	Liepshutz
3) Governmental Operations Committee		Brown <i>RUB</i>	Williamson <i>Haw</i>
4) Justice Council			
5)			

### SUMMARY ANALYSIS

This bill modifies provisions relating to secondhand dealers, and adopts some of the regulatory restrictions currently applicable to pawnbrokers, making them applicable to secondhand dealers. A secondhand dealer is a person who is in the business of purchasing, consigning, or trading certain types of previously owned or used personal property.

#### Changes include:

- Revising definitions of what constitutes secondhand goods and exempting persons.
- Repealing the exemption from regulation for mail order sales.
- Specifically exempting certain internet business from regulation as a secondhand dealer.
- Revising the recordkeeping requirements and increasing criminal penalties.
- Increasing the time law enforcement can order a hold on stolen goods.

This bill does not appear to have a fiscal impact on state or local governments, although it is likely to have a negative fiscal impact on secondhand dealers.

## FULL ANALYSIS

### I. SUBSTANTIVE ANALYSIS

#### A. HOUSE PRINCIPLES ANALYSIS:

**Provide limited government** -- This bill increases regulation of secondhand dealers.

#### B. EFFECT OF PROPOSED CHANGES:

A secondhand dealer is a person who is in the business of purchasing, consigning, or trading certain types of previously owned or used personal property. Chapter 538, F.S., regulates secondhand dealers; the registration requirements are administered by the Department of Revenue.<sup>1</sup>

Prior to 1996, pawnbrokers also were regulated by chapter 538, F.S., but pawnbrokers are now regulated pursuant to chapter 539, F.S. This bill deletes references to pawnbrokers from chapter 538, F.S., and generally increases the regulation of secondhand dealers. The regulations are similar to the regulations governing pawnbrokers.

#### Items Regulated

Section 538.03(1)(g), F.S., currently defines "secondhand goods". That definition is limited to a list of specified items. This bill removes the current list and defines secondhand goods as personal property previously owned or used which is not "regulated metals property"<sup>2</sup> and which is purchased, consigned, or traded as used property. The bill lists goods that are specifically excluded. This list contains office furniture, pianos, books, clothing, organs, coins, motor vehicles, costume jewelry, and secondhand sports equipment that is not permanently labeled with a serial number.

#### Mail Order Sales/Internet Sales

Section 538.03(2), F.S., currently lists entities and types of sales exempt from regulation pursuant to chapter 538, F.S. Included in the list of exemptions is the sale of secondhand goods by mail order, including internet sales.<sup>3</sup>

The bill deletes the exemption, thereby providing that a person in the business of purchasing or consigning secondhand goods through the mail, or through computer services, is subject to regulation as a secondhand goods dealer under chapter 538, F.S. However, this bill adds an exception for a business that contracts with other persons or entities to offer its secondhand goods for sale, purchase, consignment, or trade via an internet website, and that maintains a shop, store, or other business premises for this purpose if:

- The secondhand goods are available for viewing on the website at no charge;
- The records of the sale, purchase, consignment, or trade are maintained for two years;
- The records of the sale, purchase, consignment, or trade contain the serial number of each item, if any;
- The secondhand goods are searchable by state or zip code on the website;

<sup>1</sup> Initial registration as a secondhand dealer is \$6.00 per location, plus \$47.00 for each principal to conduct a criminal history background check. Annual renewal is \$6.00 per location.

<sup>2</sup> "Regulated metals property" refers to certain precious metals and is governed by Part II of chapter 538, F.S.

<sup>3</sup> Specifically, the current exemption covers: "Any person purchasing, consigning, or pawning secondhand goods ordered by mail, computer-assisted shopping, media-assisted, media-facilitated, or media-solicited shopping or shopping by other means of media communication, including, but not limited to, direct mail advertising, unsolicited distribution of catalogs, television, radio, or other electronic media, telephone, magazine, or newspaper advertising, so long as such person is in this state at the time of the order."

- The name under which the company conducts business is provided to the appropriate law enforcement agency;
- The business allows the appropriate law enforcement agency to inspect its premises any time during normal business hours;
- Any payment for sale, purchase, consignment, or trade must be made by check or via a money transmitter licensed under part II of chapter 560; and
  - At least 48 hours after the estimated time of contracting to offer the secondhand goods, the business verifies the item is not stolen via its serial number against the FDLE stolen property database; or
  - The business provides the appropriate law enforcement agency with an electronic copy of the name, address, phone number, driver's license number, and issuing state of the person with whom the business contracted to offer the goods, as well as an accurate description of the goods within 24 hours after entering into the contract unless other arrangements are made between the business and law enforcement.

This bill also exempts any person offering his or her own personal property for sale, purchase, consignment, or trade via an internet website when that person is not required to have a local occupational or business license for this purpose.

The bill exempts a business whose primary business is the sale, rental, or trade of motion picture videos or video games if the business:

- Requires the sellers to have a current account with the business;
- Has on file the name, address, home and work telephone numbers, government-issued identification number, place of employment, date of birth, gender, and right thumbprint of each seller of secondhand goods;
- Purchases secondhand goods from the property owner or representative at the place of business pursuant to an agreement in writing and signed by the property owner which describes the property purchased, states the date and time of the purchase, and states the seller is the lawful owner;
- Retains such purchase agreements for at least one year; and
- Pays for the purchased property in the form of a store credit that is issued to the seller and is redeemable solely by the seller or authorized user of seller's account.

## **Recordkeeping Requirements**

Section 538.04, F.S., requires a secondhand dealer to maintain records of all goods purchased and requires that a copy of each purchase record be forwarded to local law enforcement within 24 hours of purchase. The form for providing that information must be approved by the Florida Department of Law Enforcement. Section 538.06(4), F.S., requires a secondhand dealer to keep the forms for five years.

This bill increases the amount of information that must be obtained on the form to match the information that a pawnbroker must collect. The increased information includes a requirement that the person selling or consigning goods to the secondhand dealer must furnish a thumbprint. The retention time for the forms is reduced from five years to three years and forms must be maintained at the licensed premises for the first year. This bill also provides that if local law enforcement provides appropriate software and equipment, the dealer must transmit the information electronically. These provisions are identical to current pawn shop regulations in chapter 539, F.S.

## **Criminal Penalties**

Section 538.04(4), F.S., provides that it is a criminal offense for any person to knowingly give false verification of ownership<sup>4</sup> and receive money from a secondhand dealer for goods sold. If the amount

---

<sup>4</sup> This includes false or altered identification. See s. 538.04(4), F.S.

received is less than \$300, it is a first degree misdemeanor; if greater than \$300, it is a third degree felony.

This bill adds goods "consigned or traded" to the penalty provisions and increases the penalties to a third degree felony when the amount received is less than \$300 and a second degree felony when the amount received is greater than \$300. These penalties are analogous to the statute applicable to pawnbrokers.<sup>5</sup>

Section 538.07(2), F.S., currently provides that, upon a conviction for theft, violation of the secondhand dealer law, or dealing in stolen property, a court must order the defendant to make restitution to the secondhand dealer. This bill provides that restitution must be made to the secondhand dealer or to the lawful owner of the property, as applicable.

### **Inspection by Law Enforcement**

The registered premises of a secondhand dealer, including any purchase records, may be inspected during regular business hours. The local police department may inspect the premises if they are located in a municipality. The sheriff may inspect, if the premises are located outside a municipality.

This bill specifies that the "entire" registered premises is open to inspection and provides that any law enforcement officer with jurisdiction over the registered premises may inspect the premises. Thus, this bill provides that county sheriffs may inspect secondhand dealers located anywhere in their county.

### **Minimum Holding Period and Law Enforcement Holds**

Section 538.06(1), F.S., provides that a secondhand dealer must hold property 15 days before re-selling the property, unless the person who sold the property to the dealer buys it back. Chapter 539, F.S., requires a pawnbroker to hold property 30 days before offering the property for sale to the public.

Section 538.06(3), F.S., provides that a law enforcement officer may extend the hold period for 60 days if the law enforcement officer has probable cause to believe the property is stolen.

This bill amends the law enforcement hold period for secondhand dealers to 90 days. This bill also provides that, if a 90-day hold is in effect, the secondhand dealer may be compelled to surrender property believed to be stolen property to local law enforcement for use in a criminal proceeding. The criminal court may order the property returned to the person from whom it was stolen, in which case the thief must pay restitution, including attorney's fees and costs, to the secondhand dealer. This provision is identical to one currently applicable to pawnbrokers.<sup>6</sup>

### **Registration as a Secondhand Dealer**

Section 538.09(5), F.S., currently provides the requirements for registration as a secondhand goods dealer. Included is a requirement that a principal in the business may not have been convicted of, or entered a plea of guilty or no contest to a crime against the laws of Florida, any other state, or the United States which relates to registration as a secondhand dealer or which involves theft, larceny, dealing in stolen property, receiving stolen property, burglary, embezzlement, obtaining property by false pretenses, possession of altered property, any felony drug offense, any violation of section 812.015, or any fraudulent dealing within the previous five years.

---

<sup>5</sup> See section 539.001(8)(b)8.a. and b., F.S. The felony criminal offenses in s. 538.04(4), F.S., are not classified in the offense severity ranking chart of the Criminal Punishment Code; accordingly the amended third degree felony will be a Level 1 offense and the second degree felony will be a Level 4 offense. [s. 921.0023, F.S.]

<sup>6</sup> Section 539.001(16)(e)2., F.S.

This bill changes the time period from “previous 5 years” to “previous 10 years,” and adds that merely having adjudication withheld for any of the enumerated offenses disqualifies a person from being a principal in a business acting as a secondhand dealer.<sup>7</sup>

This bill also amends section 538.09, F.S., to add, upon the request of a law enforcement official, the Department of Revenue shall release the name and address of any secondhand dealer registered to do business within the official’s jurisdiction.

The effective date of this bill is October 1, 2006.

**C. SECTION DIRECTORY:**

Section 1 amends s. 538.03, F.S., regarding the definitions applicable to chapter 538, F.S.

Section 2 amends s. 538.04, F.S., regarding the recordkeeping requirements to provide criminal penalties.

Section 3 amends s. 538.05, F.S., regarding provisions relating to the inspection or records and premises.

Section 4 amends s. 538.06, F.S., regarding how long a secondhand goods dealer must hold stolen goods.

Section 5 amends s. 538.07, F.S., regarding restitution from a secondhand dealer.

Section 6 amends s. 538.09, F.S., regarding registration as a secondhand goods dealer.

Section 7 repeals s. 538.16, F.S., regarding disposal of pawned property.

Section 8 amends s. 516.02, F.S., to remove cross-references.

Section 9 reenacts s. 790.335 (3)(f), F.S., regarding firearm records to provide criminal penalties.

Section 10 provides an effective date of October 1, 2006.

**II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT**

**A. FISCAL IMPACT ON STATE GOVERNMENT:**

**1. Revenues:**

The bill does not create, modify, amend, or eliminate a state revenue source.

**2. Expenditures:**

The bill does not create, modify, amend, or eliminate a state expenditure.

**B. FISCAL IMPACT ON LOCAL GOVERNMENTS:**

**1. Revenues:**

The bill does not create, modify, amend, or eliminate a local revenue source.

**2. Expenditures:**

The bill does not create, modify, amend, or eliminate a local expenditure.

<sup>7</sup> Pawnbroker registration also has a 10 year restriction, and counts offenses for which adjudication was withheld. Pawnbroker law, however, has additional disqualifying offenses. See section 539.001(4)(a)4., F.S.



**C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:**

This bill will have a direct negative fiscal impact on businesses that deal in secondhand goods and are not exempt from the regulation. They will be required to hold merchandise longer before selling it, which is likely to increase storage costs and floor plan interest costs. They will also have increased transactional and recordkeeping costs related to the increased amount of information required for the secondhand transaction form.

**D. FISCAL COMMENTS:**

None.

**III. COMMENTS**

**A. CONSTITUTIONAL ISSUES:**

**1. Applicability of Municipality/County Mandates Provision:**

This bill does not appear to require counties or municipalities to take an action requiring the expenditure of funds, reduce the authority that counties or municipalities have to raise revenue in the aggregate, nor reduce the percentage of state tax shared with counties or municipalities.

**2. Other:**

None.

**B. RULE-MAKING AUTHORITY:**

None.

**C. DRAFTING ISSUES OR OTHER COMMENTS:**

None.

**IV. AMENDMENTS/COMMITTEE SUBSTITUTE & COMBINED BILL CHANGES**

None.

HB 651

2006

1                   A bill to be entitled  
2       An act relating to secondhand dealers; amending s. 538.03,  
3       F.S.; revising definitions; revising applicability of ch.  
4       538, F.S.; exempting persons or entities offering  
5       secondhand goods or personal property for sale, purchase,  
6       consignment, or trade via the Internet from the provisions  
7       of ch. 538, F.S., under certain circumstances; exempting  
8       certain businesses that sell, rent, or trade motion  
9       picture videos or video games from ch. 538, F.S.; amending  
10      s. 538.04, F.S.; revising recordkeeping requirements for  
11      secondhand dealers; providing penalties for knowingly  
12      giving false verification of ownership or a false or  
13      altered identification, and for receiving money from a  
14      secondhand dealer for goods sold, consigned, or traded if  
15      the value of the money received is less than \$300, and if  
16      the value of the money received is \$300 or more; providing  
17      for the electronic transfer of secondhand dealer  
18      transactions under specified circumstances; authorizing  
19      appropriate law enforcement agencies to provide a  
20      secondhand dealer with a computer and other equipment  
21      necessary to electronically transfer secondhand dealer  
22      transactions; providing procedures with respect to  
23      electronic transfer of secondhand dealer transactions;  
24      amending s. 538.05, F.S.; revising provisions relating to  
25      the inspection of records and premises of secondhand  
26      dealers; amending s. 538.06, F.S.; revising provisions  
27      with respect to the holding of goods upon probable cause  
28      that the goods are stolen; providing for payment of

HB 651

2006

restitution, attorney's fees, and costs to a secondhand dealer under specified circumstances; revising the time limit for maintenance of transaction records by dealers in secondhand property; amending s. 538.07, F.S.; revising provisions relating to restitution for stolen property recovered from a secondhand dealer; amending s. 538.09, F.S.; revising provisions with respect to registration as a secondhand dealer; revising conditions under which registration may be denied, revoked, restricted, or suspended by the Department of Revenue; repealing s. 538.16, F.S., relating to disposal of property by secondhand dealers; amending s. 516.02, F.S.; removing cross-references; reenacting s. 790.335(3)(f), F.S., which provides a second degree felony penalty for any secondhand dealer who contracts with a specified third-party provider or electronically transmits certain records of firearms transactions to any third-party provider; providing an effective date.

Be It Enacted by the Legislature of the State of Florida:

Section 1. Section 538.03, Florida Statutes, is amended to read:

538.03 Definitions; applicability.--

(1) As used in this part, the term:

(a) "Secondhand dealer" means any person, corporation, or other business organization or entity which is not a secondary metals recycler subject to part II and which is engaged in the

HB 651

2006

57 business of purchasing, consigning, or trading pawning  
58 secondhand goods. ~~However, secondhand dealers are not limited to~~  
59 ~~dealing only in items defined as secondhand goods in paragraph~~  
60 ~~(g). Except as provided in subsection (2), the term means~~  
61 ~~pawnbrokers, jewelers, precious metals dealers, garage sale~~  
62 ~~operators, secondhand stores, and consignment shops.~~

63 (b) "Precious metals dealer" means a secondhand dealer who  
64 normally or regularly engages in the business of buying used  
65 precious metals for resale. The term does not include those  
66 persons involved in the bulk sale of precious metals from one  
67 secondhand or precious metals dealer to another.

68 ~~(c) "Pawnbroker" means any person, corporation, or other~~  
69 ~~business organization or entity which is regularly engaged in~~  
70 ~~the business of making pawns but does not include a financial~~  
71 ~~institution as defined in s. 655.005 or any person who regularly~~  
72 ~~loans money or any other thing of value on stocks, bonds, or~~  
73 ~~other securities.~~

74 ~~(d) "Pawn" means either of the following transactions:~~

75 1. ~~Loan of money. A written or oral bailment of personal~~  
76 ~~property as security for an engagement or debt, redeemable on~~  
77 ~~certain terms and with the implied power of sale on default.~~

78 2. ~~Buy sell agreement. An agreement whereby a purchaser~~  
79 ~~agrees to hold property for a specified period of time to allow~~  
80 ~~the seller the exclusive right to repurchase the property. A~~  
81 ~~buy sell agreement is not a loan of money.~~

82 (c) ~~(e)~~ "Secondhand store" means the place or premises at  
83 which a secondhand dealer is registered to conduct business as a  
84 secondhand dealer, or conducts business, ~~including pawn shops.~~

HB 651

2006

(d)~~(f)~~ "Consignment shop" means a shop engaging in the business of accepting for sale, on consignment, secondhand goods which, having once been used or transferred from the manufacturer to the dealer, are then received into the possession of a third party.

(e) "Acquire" means to obtain by purchase, consignment, or trade.

(f)~~(g)~~ "Secondhand goods" means personal property previously owned or used, which is not regulated metals property regulated under part II and which is purchased, consigned, or traded ~~pawned~~ as used property. Such secondhand goods shall not include office furniture, pianos, books, clothing, organs, coins, motor vehicles, costume jewelry, and secondhand sports equipment that is not permanently labeled with a serial number.

For purposes of this paragraph, "secondhand sports equipment" does not include golf clubs. ~~be limited to watches, diamonds, gems, and other precious stones, fishing rods, reels, and tackle; audio and video electronic equipment, including television sets, compact disc players, radios, amplifiers, receivers, turntables, tape recorders, video tape recorders, speakers and citizens' band radios; computer equipment; radar detectors; depth finders; trolling motors; outboard motors; sterling silver flatware and serving pieces; photographic equipment, including cameras, video and film cameras, lenses, electronic flashes, tripods, and developing equipment; microwave ovens; animal fur coats; marine equipment; video games and cartridges; power lawn and landscape equipment; office equipment such as copiers, fax machines, and postage machines but~~

HB 651

2006

113 ~~excluding furniture; sports equipment; golf clubs; weapons,~~  
 114 ~~including knives, swords, and air guns; telephones, including~~  
 115 ~~cellular and portable; firearms; tools; calculators; musical~~  
 116 ~~instruments, excluding pianos and organs; lawnmowers; bicycles;~~  
 117 ~~typewriters; motor vehicles; gold, silver, platinum, and other~~  
 118 ~~precious metals excluding coins; and jewelry, excluding costume~~  
 119 ~~jewelry.~~

120       (g)~~(h)~~ "Transaction" means any purchase, consignment, or  
 121 trade pawn of secondhand goods by a secondhand dealer.

122       (h)~~(i)~~ "Precious metals" means any item containing any  
 123 gold, silver, or platinum, or any combination thereof,  
 124 excluding:

125       1. ~~any chemical or any automotive, photographic,~~  
 126 ~~electrical, medical, or dental materials or electronic parts.~~

127       2. ~~Any coin with an intrinsic value less than its~~  
 128 ~~numismatic value.~~

129       3. ~~Any gold bullion coin.~~

130       4. ~~Any gold, silver, or platinum bullion that has been~~  
 131 ~~assayed and is properly marked as to its weight and fineness.~~

132       5. ~~Any coin which is mounted in a jewelry setting.~~

133       (i)~~(j)~~ "Department" means the Department of Revenue.

134       (k)~~"Pledge" means pawn or buy-sell agreement.~~

135       (2) This chapter does not apply to:

136       (a) Any secondhand goods transaction involving an  
 137 organization or entity registered with the state as a nonprofit,  
 138 religious, or charitable organization or any school-sponsored  
 139 association or organization other than a secondary metals  
 140 recycler subject to the provisions of part II.

HB 651

2006

141           (b) A law enforcement officer acting in an official  
142 capacity.

143           (c) A trustee in bankruptcy, executor, administrator, or  
144 receiver who has presented proof of such status to the  
145 secondhand dealer.

146           (d) Any public official acting under judicial process or  
147 authority who has presented proof of such status to the  
148 secondhand dealer.

149           (e) A sale on the execution, or by virtue of any process  
150 issued by a court, if proof thereof has been presented to the  
151 secondhand dealer.

152           (f) Any garage sale operator who holds garage sales less  
153 than 10 weekends per year.

154           (g) Any person at antique, coin, or collectible shows or  
155 sales.

156           (h) Any person who sells household personal property as an  
157 agent for the property owner or their representative pursuant to  
158 a written agreement at that person's residence.

159           (i) The purchase, consignment, or trade ~~pawn~~ of secondhand  
160 goods from one secondhand dealer to another secondhand dealer  
161 when the selling secondhand dealer has complied with the  
162 requirements of this chapter.

163           (j) Any person accepting a secondhand good as a trade-in  
164 for a similar item of greater value.

165           (k) Any person purchasing, consigning, or trading ~~pawning~~  
166 secondhand goods at a flea market regardless of whether at a  
167 temporary or permanent business location at the flea market.

168           (l) Any auction business as defined in s. 468.382(1).

HB 651

2006

169 (m) Any business that is registered with the Department of  
170 Revenue for sales tax purposes as an antique dealer pursuant to  
171 chapter 212 and that purchases secondhand goods from the  
172 property owner or her or his representative at the property  
173 owner's residence pursuant to a written agreement that states  
174 the name, address, and telephone number of the property owner  
175 and the type of property purchased.

176 (n) A business that contracts with other persons or  
177 entities to offer its secondhand goods for sale, purchase,  
178 consignment, or trade via an Internet website, and that  
179 maintains a shop, store, or other business premises for this  
180 purpose, if all of the following apply:

181 1. The secondhand goods must be available on the website  
182 for viewing by the general public at no charge;

183 2. The records of the sale, purchase, consignment, or  
184 trade must be maintained for at least 2 years;

185 3. The records of the sale, purchase, consignment, or  
186 trade, and the description of the secondhand goods as listed on  
187 the website, must contain the serial number of each item, if  
188 any;

189 4. The secondhand goods listed on the website must be  
190 searchable based upon the state or zip code;

191 5. The business must provide the appropriate law  
192 enforcement agency with the name or names under which it  
193 conducts business on the website;

194 6. The business must allow the appropriate law enforcement  
195 agency to inspect its business premises at any time during  
196 normal business hours;



197        7. Any payment by the business resulting from such a sale,  
198 purchase, consignment, or trade must be made to the person or  
199 entity with whom the business contracted to offer the goods and  
200 must be made by check or via a money transmitter licensed under  
201 part II of chapter 560; and

202        8.a. At least 48 hours after the estimated time of  
203 contracting to offer the secondhand goods, the business must  
204 verify that any item having a serial number is not stolen  
205 property by entering the serial number of the item into the  
206 Department of Law Enforcement's stolen article database located  
207 at the Florida Crime Information Center's public access system  
208 website. The business shall record the date and time of such  
209 verification on the contract covering the goods. If such  
210 verification reveals that an item is stolen property, the  
211 business shall immediately remove the item from any website on  
212 which it is being offered and notify the appropriate law  
213 enforcement agency; or

214        b. The business must provide the appropriate law  
215 enforcement agency with an electronic copy of the name, address,  
216 phone number, driver's license number, and issuing state of the  
217 person with whom the business contracted to offer the goods, as  
218 well as an accurate description of the goods, including make,  
219 model, serial number, and any other unique identifying marks,  
220 numbers, names, or letters that may be on an item, in a format  
221 agreed upon by the business and the appropriate law enforcement  
222 agency. This information must be provided to the appropriate law  
223 enforcement agency within 24 hours after entering into the  
224 contract unless other arrangements are made between the business

HB 651

2006

225 ~~and the law enforcement agency. Any person purchasing,~~  
226 ~~consigning, or pawning secondhand goods ordered by mail,~~  
227 ~~computer-assisted shopping, media-assisted, media-facilitated,~~  
228 ~~or media-solicited shopping or shopping by other means of media~~  
229 ~~communication, including, but not limited to, direct mail~~  
230 ~~advertising, unsolicited distribution of catalogs, television,~~  
231 ~~radio, or other electronic media, telephone, magazine, or~~  
232 ~~newspaper advertising, so long as such person is in this state~~  
233 ~~at the time of the order.~~

234       (o) Any person offering his or her own personal property  
235 for sale, purchase, consignment, or trade via an Internet  
236 website, or a person or entity offering the personal property of  
237 others for sale, purchase, consignment, or trade via an Internet  
238 website, when that person or entity does not have, and is not  
239 required to have, a local occupational or business license for  
240 this purpose.

241       (p) A business whose primary business is the sale, rental,  
242 or trade of motion picture videos or video games, if the  
243 business:

244           1. Requires the sellers of secondhand goods to have a  
245 current account with the business;

246           2. Has on file in a readily accessible format the name,  
247 current residential address, home and work telephone numbers,  
248 government-issued identification number, place of employment,  
249 date of birth, gender, and right thumbprint of each seller of  
250 secondhand goods;

251           3. Purchases secondhand goods from the property owner or  
252 his or her representative at the place of business pursuant to

HB 651

2006

an agreement in writing and signed by the property owner which describes the property purchased, states the date and time of the purchase, and states that the seller is the lawful owner of the property;

4. Retains such purchase agreements for not less than 1 year; and

5. Pays for the purchased property in the form of a store credit that is issued to the seller and is redeemable solely by the seller or another authorized user of the seller's account with that business.

~~(g) (e)~~ A motor vehicle dealer as defined in s. 320.27.

(3) This part does not apply to secondary metals recyclers regulated under part II, except for s. 538.11, which applies to both secondhand dealers and secondary metals recyclers.

Section 2. Section 538.04, Florida Statutes, is amended to read:

538.04 Recordkeeping requirements; penalties.--

(1) Secondhand dealers shall complete a secondhand dealers transaction form at the time of the actual transaction. A secondhand dealer shall maintain a copy of a completed transaction form on the registered premises for at least 1 year after the date of the transaction. However, the secondhand dealer shall maintain a copy of the transaction form for a period of no less than 3 years. Secondhand dealers shall maintain records of all transactions of secondhand goods on the premises. Unless other arrangements have been agreed upon by the secondhand dealer and the appropriate law enforcement agency, the secondhand dealer shall, within 24 hours after of the

HB 651

2006

281 acquisition of any secondhand goods, ~~by purchase or pledge as~~  
 282 ~~security for a loan, a secondhand dealer shall~~ deliver to the  
 283 police department of the municipality where the goods were  
 284 acquired ~~purchased~~ or, if the goods were acquired ~~purchased~~  
 285 outside of a municipality, to the sheriff's department of the  
 286 county where the goods were acquired ~~purchased~~, a record of the  
 287 transaction on a form approved by the Department of Law  
 288 Enforcement. Such record shall contain:

289 (a) The time, date, and place of the transaction.

290 (b) A complete and accurate description of the goods  
 291 acquired, including the following information, if applicable:  
 292 ~~any serial numbers, manufacturer's numbers, or other identifying~~  
 293 ~~marks or characteristics.~~

294 1. Brand name.

295 2. Model number.

296 3. Manufacturer's serial number.

297 4. Size.

298 5. Color, as apparent to the untrained eye.

299 6. Precious metal type, weight, and content, if known.

300 7. Gemstone description, including the number of stones,  
 301 if applicable.

302 8. In the case of firearms, the type of action, caliber or  
 303 gauge, number of barrels, barrel length, and finish.

304 9. Any other unique identifying marks, numbers, or  
 305 letters.

306 (c) A description of the person from whom the goods were  
 307 acquired, including:

308 1. Full name, current residential address, workplace, and

HB 651

2006

home and work phone numbers.

2. Height, weight, date of birth, race, gender, hair color, eye color, and any other identifying marks.

3. The right thumbprint, free of smudges and smears, of the person from whom the goods were acquired.

(d) Any other information required by the form approved by the Department of Law Enforcement.

(2) The secondhand dealer shall require verification of the identification by the exhibition of a government-issued photographic identification card such as a driver's license or military identification card. The record shall contain the type of identification exhibited, the issuing agency, and the number thereon.

(3) The seller shall sign a statement verifying that the seller is the rightful owner of the goods or is entitled to sell, consign, or trade ~~pledge~~ the goods.

(4) Any person who knowingly gives false verification of ownership or who gives a false or altered identification, and who receives money from a secondhand dealer for goods sold, consigned, or traded ~~pledged~~ commits:

(a) If the value of the money received is less than \$300, a felony ~~misdemeanor~~ of the third ~~first~~ degree, punishable as provided in s. 775.082, ~~or~~ s. 775.083, or s. 775.084.

(b) If the value of the money received is \$300 or more, a felony of the second ~~third~~ degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

(5) Secondhand dealers are exempt from the provisions of this section for all transactions involving secondhand sports

HB 651

2006

337 equipment except secondhand sports equipment that is permanently  
338 labeled with a serial number.

339       (6) If the appropriate law enforcement agency supplies a  
340 secondhand dealer with appropriate software and the secondhand  
341 dealer has computer capability, secondhand dealer transactions  
342 shall be electronically transferred. If a secondhand dealer does  
343 not have computer capability, the appropriate law enforcement  
344 agency may provide the secondhand dealer with a computer and all  
345 necessary equipment for the purpose of electronically  
346 transferring secondhand dealer transactions. The appropriate law  
347 enforcement agency shall retain ownership of the computer,  
348 unless otherwise agreed upon. The secondhand dealer shall  
349 maintain the computer in good working order, ordinary wear and  
350 tear excepted. In the event the secondhand dealer transfers  
351 secondhand dealer transactions electronically, the secondhand  
352 dealer is not required to also deliver to the appropriate law  
353 enforcement agency the original or copies of the secondhand  
354 transaction forms. For the purpose of a criminal investigation,  
355 the appropriate law enforcement agency may request that the  
356 secondhand dealer produce an original of a transaction form that  
357 has been electronically transferred. The secondhand dealer shall  
358 deliver this form to the appropriate law enforcement agency  
359 within 24 hours after the request.

360       (7) If the original transaction form is lost or destroyed  
361 by the appropriate law enforcement agency, a copy may be used by  
362 the secondhand dealer as evidence in court. When an electronic  
363 image of a customer's identification is accepted for a  
364 transaction, the secondhand dealer must maintain the electronic

HB 651

2006

365 image in order to meet the recordkeeping requirements applicable  
366 to the original transaction form. If a criminal investigation  
367 occurs, the secondhand dealer shall, upon request, provide a  
368 clear and legible copy of the image to the appropriate law  
369 enforcement agency.

370 Section 3. Section 538.05, Florida Statutes, is amended to  
371 read:

372 538.05 Inspection of records and premises of secondhand  
373 dealers.--

374 (1) The entire registered premises and required records of  
375 each secondhand dealer are subject to inspection during regular  
376 business hours by any law enforcement officer with jurisdiction  
377 ~~the police department if the premises are located within a~~  
378 ~~municipality or, if located outside a municipality, by the~~  
379 ~~sheriff's department of the county in which the premises are~~  
380 ~~located, and by any state law enforcement officer who has~~  
381 ~~jurisdiction over the dealer.~~

382 (2) The inspection authorized by subsection (1) shall  
383 consist of an examination on the registered premises of the  
384 inventory and required records to determine whether the records  
385 and inventory are being maintained on the registered premises as  
386 required by s. 538.04 and whether the holding period required by  
387 s. 538.06 is being complied with.

388 Section 4. Section 538.06, Florida Statutes, is amended to  
389 read:

390 538.06 Holding period.--

391 (1) A secondhand dealer shall not sell, barter, exchange,  
392 alter, adulterate, use, or in any way dispose of any secondhand

HB 651

2006

goods within 15 calendar days after ~~of~~ the date of acquisition of the goods. Such holding periods are not applicable when the person known by the secondhand dealer to be the person from whom the goods were acquired desires to redeem, repurchase, or recover the goods, provided the dealer can produce the record of the original transaction with verification that the customer is the person from whom the goods were originally acquired.

(2) A secondhand dealer must maintain actual physical possession of all secondhand goods throughout a transaction. It is unlawful for a secondhand dealer to accept title or any other form of security in secondhand goods in lieu of actual physical possession. A secondhand dealer who accepts title or any other form of security in secondhand goods in lieu of actual physical possession commits a misdemeanor of the first degree, punishable as provided in s. 775.082 or s. 775.083.

(3) Upon probable cause that goods held by a secondhand dealer are stolen, a law enforcement officer with jurisdiction may place a 90-day written hold order on the goods ~~extend the holding period to a maximum of 60 days~~. However, the hold ~~holding period~~ may be extended beyond 90 ~~60~~ days by a court of competent jurisdiction upon a finding of probable cause that the property is stolen and further holding is necessary for the purposes of trial or to safeguard such property. The dealer shall assume all responsibility, civil or criminal, relative to the property or evidence in question, including responsibility for the actions of any employee with respect thereto.

(4) While a hold order is in effect, the secondhand dealer must, upon request, release the property subject to the hold



HB 651

2006

order to the custody of a law enforcement officer with jurisdiction for use in a criminal investigation. The release of the property to the custody of the law enforcement officer is not considered a waiver or release of the secondhand dealer's rights or interest in the property. Upon completion of the criminal proceeding, the property must be returned to the secondhand dealer unless the court orders other disposition. When such other disposition is ordered, the court shall additionally order the person from whom the secondhand dealer acquired the property to pay restitution to the secondhand dealer in the amount that the secondhand dealer paid for the property together with reasonable attorney's fees and costs.

~~(5)(4)~~ All dealers in secondhand property regulated by this chapter shall maintain transaction records for 3 5 years.

Section 5. Section 538.07, Florida Statutes, is amended to read:

538.07 Penalty for violation of chapter.--

(1) Except as ~~where~~ otherwise provided herein, a person who knowingly violates any provision of this chapter commits a misdemeanor of the first degree, punishable as provided in s. 775.082 and by a fine not to exceed \$10,000.

(2) When the lawful owner recovers stolen property from a secondhand dealer and the person who sold or pledged the stolen property to the secondhand dealer is convicted of theft, a violation of this section, or dealing in stolen property, the court shall order the defendant to make restitution to either the secondhand dealer or the lawful owner, as applicable, pursuant to s. 775.089.

HB 651

2006

449 Section 6. Section 538.09, Florida Statutes, is amended to  
450 read:

451 538.09 Registration.--

452 (1) A secondhand dealer shall not engage in the business  
453 of purchasing, consigning, or trading ~~pawning~~ secondhand goods  
454 from any location without registering with the Department of  
455 Revenue. A fee equal to the federal and state costs for  
456 processing required fingerprints must be submitted to the  
457 department with each application for registration. One  
458 application is required for each dealer. If a secondhand dealer  
459 is the owner of more than one secondhand store location, the  
460 application must list each location, and the department shall  
461 issue a duplicate registration for each location. For purposes  
462 of subsections (4) and (5) of this section, these duplicate  
463 registrations shall be deemed individual registrations. A dealer  
464 shall pay a fee of \$6 per location at the time of registration  
465 and an annual renewal fee of \$6 per location on October 1 of  
466 each year. All fees collected, less costs of administration,  
467 shall be transferred into a trust fund to be established and  
468 entitled the Secondhand Dealer and Secondary Metals Recycler  
469 Clearing Trust Fund. The Department of Revenue shall forward the  
470 full set of fingerprints to the Department of Law Enforcement  
471 for state and federal processing, provided the federal service  
472 is available, to be processed for any criminal justice  
473 information as defined in s. 943.045. The cost of processing  
474 such fingerprints shall be payable to the Department of Law  
475 Enforcement by the Department of Revenue. The department may  
476 issue a temporary registration to each location pending

HB 651

2006

477 completion of the background check by state and federal law  
478 enforcement agencies, but shall revoke such temporary  
479 registration if the completed background check reveals a  
480 prohibited criminal background. An applicant for a secondhand  
481 dealer registration must be a natural person who has reached the  
482 age of 18 years.

483 (a) If the applicant is a partnership, all the partners  
484 must apply.

485 (b) If the applicant is a joint venture, association, or  
486 other noncorporate entity, all members of such joint venture,  
487 association, or other noncorporate entity must make application  
488 for registration as natural persons.

489 (c) If the applicant is a corporation, the registration  
490 must include the name and address of such corporation's  
491 registered agent for service of process in the state and a  
492 certified copy of statement from the Secretary of State that the  
493 corporation is duly organized in the state or, if the  
494 corporation is organized in a state other than Florida, a  
495 certified copy of statement from the Secretary of State that the  
496 corporation is duly qualified to do business in this state. If  
497 the dealer has more than one location, the application must list  
498 each location owned by the same legal entity and the department  
499 shall issue a duplicate registration for each location.

500 (2) The secondhand dealer shall furnish with her or his  
501 registration a complete set of her or his fingerprints,  
502 certified by an authorized law enforcement officer, and a recent  
503 fullface photographic identification card of herself or himself.  
504 The Department of Law Enforcement shall report its findings to

HB 651

2006

the Department of Revenue within 30 days after the date fingerprint cards are submitted for criminal justice information.

(3) The secondhand dealer's registration shall be conspicuously displayed at her or his registered location ~~principal place of business~~. A secondhand dealer must hold secondhand goods at the registered location until 15 days after the secondhand transaction or until any extension of the holding period has expired, whichever is later, ~~and must retain records of each transaction which is not specifically exempted by this chapter. A secondhand dealer shall not dispose of property at any location until the holding period has expired unless the transaction is specifically exempted by this chapter.~~

(4) The department may impose a civil fine of up to \$10,000 for each violation of this section, which fine shall be transferred into the General Revenue Fund. If the fine is not paid within 60 days, the department may bring a civil action under s. 120.69 to recover the fine.

(5) In addition to the fine provided in subsection (4), registration under this section may be denied or any registration granted may be revoked, restricted, or suspended by the department if the department determines that the applicant or registrant:

(a) Has violated any provision of this chapter or any rule or order made pursuant to this chapter;

(b) Has made a material false statement in the application for registration;

(c) Has been guilty of a fraudulent act in connection with

HB 651

2006

any purchase or sale or has been or is engaged in or is about to engage in any practice, purchase, or sale which is fraudulent or in violation of the law;

(d) Has made a misrepresentation or false statement to, or concealed any essential or material fact from, any person in making any purchase or sale;

(e) Is making purchases or sales through any business associate not registered in compliance with the provisions of this chapter;

(f) Has, within the preceding 10-year ~~5-year~~ period for new registrants who apply for registration on or after October 1, 2005, been convicted of, or has entered a plea of guilty or nolo contendere to, or had adjudication withheld for, a crime against the laws of this state or any other state or of the United States which relates to registration as a secondhand dealer or which involves theft, larceny, dealing in stolen property, receiving stolen property, burglary, embezzlement, obtaining property by false pretenses, possession of altered property, any felony drug offense, any violation of s. 812.015, or any fraudulent ~~or dishonest~~ dealing;

(g) Has had a final judgment entered against her or him in a civil action upon grounds of fraud, embezzlement, misrepresentation, or deceit; or

(h) Has failed to pay any sales tax owed to the Department of Revenue.

In the event the department determines to deny an application or

HB 651

2006

561 | revoke a registration, it shall enter a final order with its  
562 | findings on the register of secondhand dealers and their  
563 | business associates, if any; and denial, suspension, or  
564 | revocation of the registration of a secondhand dealer shall also  
565 | deny, suspend, or revoke the registration of such secondhand  
566 | dealer's business associates.

567 | (6) Upon the request of a law enforcement official, the  
568 | Department of Revenue shall release to the official the name and  
569 | address of any secondhand dealer registered to do business  
570 | within the official's jurisdiction.

571 | Section 7. Section 538.16, Florida Statutes, is repealed.

572 | Section 8. Subsection (4) of section 516.02, Florida  
573 | Statutes, is amended to read:

574 | 516.02 Loans; lines of credit; rate of interest;  
575 | license.--

576 | (4) This chapter does not apply to any person who does  
577 | business under, and as permitted by, any law of this state or of  
578 | the United States relating to banks, savings banks, trust  
579 | companies, building and loan associations, credit unions, or  
580 | industrial loan and investment companies. ~~This chapter also does~~  
581 | ~~not apply to title loans as defined in s. 538.03(1)(i) or pawns~~  
582 | ~~as defined in s. 538.03(1)(d).~~ A pawnbroker may not be licensed  
583 | to transact business under this chapter.

584 | Section 9. For the purpose of incorporating the amendment  
585 | made by this act to section 538.03, Florida Statutes, in a  
586 | reference thereto, paragraph (f) of subsection (3) of section  
587 | 790.335, Florida Statutes, is reenacted to read:

588 | 790.335 Prohibition of registration of firearms.--

HB 651

2006

589           (3)   EXCEPTIONS.--The provisions of this section shall not  
590   apply to:

591           (f)   Firearm records, including paper pawn transaction  
592   forms and contracts on firearm transactions, required by  
593   chapters 538 and 539.

594           1.   Electronic firearm records held pursuant to chapter 538  
595   may only be kept by a secondhand dealer for 30 days after the  
596   date of the purchase of the firearm by the secondhand dealer.

597           2.   Electronic firearm records held pursuant to chapter 539  
598   may only be kept by a pawnbroker for 30 days after the  
599   expiration of the loan that is secured by a firearm or 30 days  
600   after the date of purchase of a firearm, whichever is  
601   applicable.

602           3.   Except as required by federal law, any firearm records  
603   kept pursuant to chapter 538 or chapter 539 shall not, at any  
604   time, be electronically transferred to any public or private  
605   entity, agency, business, or enterprise, nor shall any such  
606   records be copied or transferred for purposes of accumulation of  
607   such records into lists, registries, or databases.

608           4.   Notwithstanding subparagraph 3., secondhand dealers and  
609   pawnbrokers may electronically submit firearm transaction  
610   records to the appropriate law enforcement agencies as required  
611   by chapters 538 and 539; however, the law enforcement agencies  
612   may not electronically submit such records to any other person  
613   or entity and must destroy such records within 60 days after  
614   receipt of such records.

615           5.   Notwithstanding subparagraph 3., secondhand dealers and  
616   pawnbrokers may electronically submit limited firearms records

HB 651

2006

617 consisting solely of the manufacturer, model, serial number, and  
618 caliber of pawned or purchased firearms to a third-party private  
619 provider that is exclusively incorporated, exclusively owned,  
620 and exclusively operated in the United States and that restricts  
621 access to such information to only appropriate law enforcement  
622 agencies for legitimate law enforcement purposes. Such records  
623 must be destroyed within 30 days by the third-party provider. As  
624 a condition of receipt of such records, the third-party provider  
625 must agree in writing to comply with the requirements of this  
626 section. Any pawnbroker or secondhand dealer who contracts with  
627 a third-party provider other than as provided in this act or  
628 electronically transmits any records of firearms transactions to  
629 any third-party provider other than the records specifically  
630 allowed by this paragraph commits a felony of the second degree,  
631 punishable as provided in s. 775.082 or s. 775.083.

632       Section 10. This act shall take effect October 1, 2006.





## HOUSE OF REPRESENTATIVES STAFF ANALYSIS

**BILL #:** HB 675 CS

Public Records and Public Meetings

**SPONSOR(S):** Pickens

**TIED BILLS:**

**IDEN./SIM. BILLS:** SB 1190

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1) <u>Health Care Regulation Committee</u>	<u>11 Y, 0 N, w/CS</u>	<u>Bell</u>	<u>Mitchell</u>
2) <u>Local Government Council</u>	<u>8 Y, 0 N</u>	<u>Nelson</u>	<u>Hamby</u>
3) <u>Governmental Operations Committee</u>		<u>Mitchell</u> <i>XY</i>	<u>Williamson</u> <i>RAW</i>
4) <u>Health &amp; Families Council</u>			
5) _____			

### SUMMARY ANALYSIS

The bill expands, to include the purchaser of a public hospital, an existing provision which prevents the lessee of a public hospital from being construed to be "acting on behalf of" the lessor, unless the lease document expressly provides to the contrary.

The bill also provides that the records and certain portions of governing board meetings of a private corporation that leases or purchases a public hospital are confidential and not subject to the state's public records and open meetings laws.

The bill specifies that it does not impact existing law relating to discovery of records and information that are otherwise discoverable under the Florida Rules of Civil Procedure, or any statutory provision allowing discovery or presuit disclosure of such records and information for the purpose of civil actions.

The bill also specifies that certain provisions of the act apply to all private corporations that have purchased or leased public hospitals regardless of whether such purchase or lease occurred prior to the effective date of the act.

The bill provides the required five-year-review for new public records exemptions.

The bill contains a public necessity statement.

This bill does not appear to create, modify, or eliminate rulemaking authority.

This bill does not appear to have a fiscal impact on local governments. The bill does not appear to have an impact on state government revenues, but may have a minimal fiscal impact on the expenditures of state government for implementation.

**This bill requires passage by a two-thirds vote of each house.**

## FULL ANALYSIS

### I. SUBSTANTIVE ANALYSIS

#### A. HOUSE PRINCIPLES ANALYSIS:

Provide limited government – The bill decreases access to certain public records.

#### B. EFFECT OF PROPOSED CHANGES:

##### Background on Public Records and Public Meetings Laws

Section 24(a), Art. I of the State Constitution provides the state's public policy regarding access to government records. The section guarantees every person a right to inspect or copy any public record of the legislative, executive and judicial branches of government, except with respect to records which are exempted or specifically made confidential. Section 24(b) of Art. 1 provides the state's public policy regarding access to government meetings. The section requires that all meetings of the executive branch of state government or of any collegial public body of a county, municipality, school district or special district at which official acts are to be taken or at which public business of such body is to be transacted or discussed shall be open and noticed to the public.

The Legislature may provide by general law passed by two-thirds vote for the exemption of records and meetings from these constitutional requirements. Any such law must state with specificity the public necessity justifying the exemption, and be no broader than necessary to accomplish the stated purpose of the law.

Public policy regarding access to government records and meetings also is addressed in the Florida Statutes. Section 119.07(1), F.S., guarantees every person a right to inspect and copy any state, county or municipal record, and s. 286.011, F.S., requires that all state, county or municipal meetings be open and noticed to the public.

The "Open Government Sunset Review Act"<sup>1</sup> provides that a public records or public meetings exemption may be created or maintained only if it serves an identifiable public purpose, and is no broader than necessary to meet the public purpose that it serves. An identifiable public purpose is served if the exemption meets one of the following purposes and the Legislature finds that the purpose is sufficiently compelling to override the strong public policy of open government and cannot be accomplished without the exemption:

- Allows the state or its political subdivisions to effectively and efficiently administer a governmental program, which administration would be significantly impaired without the exemption;
- Protects sensitive personal information that, if released, would be defamatory or jeopardize an individual's<sup>2</sup> safety; or
- Protects trade or business secrets.

##### Public Records Requirements of Leased Hospitals

Section 395.3036, F.S., provides that records of a private corporation that leases a public hospital or other public health care facilities are confidential and exempt from s. 119.07(1), F.S., and s.24(a), Art. I of the State Constitution, and the meetings of the governing board of such a corporation are exempt

---

<sup>1</sup> Section 119.15, F.S.

<sup>2</sup> Only the identity of an individual may be exempted under this provision.

from s. 286.011, F.S., and s. 24(b), Art. I of the State Constitution, when the public lessor complies with the public finance accountability provisions of s. 155.40(5), F.S., with respect to the transfer of any public funds to the private lessee and when the private lessee meets at least three of the following five criteria:

- The public lessor that owns the public hospital or other public health care facility was not the incorporator of the private corporation that leases the public hospital or other health care facility;
- The public lessor and the private lessee do not commingle any of their funds in any account maintained by either of them, other than the payment of the rent and administrative fees or the transfer of funds;
- Except as otherwise provided by law, the private lessee is not allowed to participate, except as a member of the public, in the decision making process of the public lessor;
- The lease agreement does not expressly require the lessee to comply with the requirements of ss. 119.07(1) and 286.011, F.S.; and
- The public lessor is not entitled to receive any revenues from the lessee, except for rental or administrative fees due under the lease, and the lessor is not responsible for the debts or other obligations of the lessee.

#### Sale or Lease of a Public Hospital

Section 155.40, F.S., authorizes any county, district or municipal hospital organized and existing under the laws of Florida, acting by and through its governing board, to sell or lease the hospital to a for-profit or not-for-profit Florida corporation, and enter into leases or other contracts with a for-profit or not-for-profit Florida corporation for the purpose of operating and managing such hospital and any or all of its facilities. The term of any such lease, contract or agreement and the conditions, covenants and agreements contained therein must be determined by the governing board of the county, district or municipal hospital. The governing board of the hospital must find that the sale, lease or contract is in the best interests of the public and must state the basis of the finding. If the governing board of a county, district or municipal hospital decides to lease the hospital, it must give notice and comply with the requirements of the section.

Section 155.40(6), F.S., provides that, *unless otherwise expressly stated in the lease documents*, the transaction involving the sale or lease of a hospital *may not be construed* as: a transfer of a *governmental function* from the county, district or municipality to the private purchaser or lessee; constituting a financial interest of the public lessor in the private lessee; or making a private lessee an integral part of the public lessor's decisionmaking process. Under s. 155.40(7), F.S., the lessee of a hospital, pursuant to s. 155.40, F.S., or any special act of the Legislature, operating under a lease may not be construed to be "acting on behalf of" the lessor as that term is used in statute, *unless the lease document expressly provides to the contrary*.

When a newspaper and its publisher brought an action against a private lessee of a public hospital seeking mandamus, injunctive and declaratory relief regarding a public records request for the lessee's board minutes, the First District Court of Appeal found that the apparent purpose of ss. 155.40(6) and (7), F.S., are to exempt private lessees from the public records and meetings laws as argued by Baker County Medical Services, Inc., in support of its argument for nondisclosure. The court held subsections 155.40(6) and (7), F.S., unconstitutional because there were no legislative findings regarding public necessity for the exemption when the subsection was enacted by the Legislature. See, Baker County Press, Inc. v. Baker County Medical Services, Inc., 870 So.2d 189 (Fla. 1st DCA 2004).

## Memorial Hospital-West Volusia, Inc. v. News-Journal Corporation and Tanner Andrews

In 1957, the Florida Legislature created the West Volusia Hospital Authority (the "Authority"), as an independent taxing district (ch. 57-2085, s.1, L.O.F.). The Authority was empowered to establish, construct, operate and maintain such hospitals as in the elected governing board's opinion were necessary for the preservation of the public health, public good, and for the use of the people of the district, and to provide care to the indigent sick residing within the taxing district without charge in those facilities. The Authority developed, owned and operated the West Volusia Memorial Hospital as a publicly-owned hospital. In 1993, the Authority entered into negotiations with Memorial Health Systems (MHS) to lease and operate West Volusia Memorial Hospital. This lease was executed on July 28, 1994.

In December 1994, News-Journal, a Florida corporation which publishes *The News-Journal*, a daily newspaper in Daytona Beach, Florida, filed a complaint in the Circuit Court seeking a declaratory decree that the records of MHS were subject to the Public Records Act and the Sunshine Law. The Circuit Court entered a final judgment in favor of MHS. On appeal, the Fifth District Court of Appeal reversed and held that MHS was subject to the Public Records Act and the Sunshine Law. The court concluded that MHS was "acting on behalf of the Authority." See, News-Journal Corp. v. Memorial Hospital-West Volusia, Inc., 695 So. 2d. 418, (Fla. 5<sup>th</sup> DCA 1997). The Supreme Court of Florida upheld the Fifth District Court of Appeal, noting that the totality of factors demonstrated that the authorized function of the Authority was transferred and delegated to a private corporation, a lessee. See, Memorial Hospital-West Volusia, Inc. v. News-Journal Corp., 729 So. 2d 373, 383, (Fla. 1999).

On March 23, 2000, MHS advised the Authority that it intended to terminate the lease contract as of midnight September 30, 2000. The Authority was not interested in operating the hospital and eventually worked out a sale agreement with Adventist Health Systems, a not-for-profit Florida corporation, as authorized in s.155.40, F.S. Under the new ownership the name of the hospital was changed to Florida Hospital Deland.

In a recent action, the Circuit Court in Volusia County granted the newspaper's motion for final summary judgment and denied Memorial Hospital-West Volusia, Inc.'s motion for summary judgment.<sup>3</sup> The Circuit Court declared that the public records law applies to the Memorial Health System, a *purchaser (not a lessee) of a public hospital*, when it engaged in the function of operating the hospital and caring for the indigent within the taxing district of the Authority under and pursuant to the terms and conditions of the transfer documents.<sup>4</sup> The Circuit Court ordered that, as of the effective date of the transfer documents, Memorial Health System, a *purchaser (not a lessee) of a public hospital*, must comply with the Public Records and Meetings Laws.<sup>5</sup>

On March 24, 2006, however, the Fifth District Court of Appeal concluded that the public disclosure laws no longer apply because Memorial Hospital-West Volusia, Inc., had purchased the hospital. The Fifth District Court of Appeal reversed the summary judgments entered in favor of the newspaper.

### Effect of Proposed Changes

This bill extends s. 155.40(7), F.S., (which specifies that the *lessee* of a public hospital shall not be construed to be "acting on behalf of" the lessor unless the lease document expressly provides to the contrary) to the *purchaser* of such a hospital.

The bill also specifies that the records of a private corporation that leases or purchases a public hospital are confidential and not subject to s. 119.07(1), F.S., or s. 24(a), Art. I of the State Constitution, and that the meetings of the governing board of a private corporation that leases or purchases a public hospital are not subject to s. 286.011, F.S., or s. 24(b), Art. I of the State Constitution.

<sup>3</sup> See Memorial Hospital-West Volusia, Inc. v. News-Journal Corp. and Tanner Andrews, Case No. 2002-31972, Seventh Judicial Circuit, Volusia County, (February 16, 2005).

<sup>4</sup> Id.

<sup>5</sup> Id.

The bill provides a public necessity statement that includes findings that:

- the Legislature always intended that private corporations that purchase public hospitals are not subject to public records and open meetings laws;
- private entities do not act on behalf of the public entities from which they purchase or lease a public hospital; and
- if the public records laws and open meetings laws apply to private corporations that purchase or lease public hospitals, public entities may find it difficult, if not impossible, to find a private corporation that is willing to purchase or lease a public hospital.

The bill provides for future review and repeal of the exemptions on October 2, 2011, pursuant to the Open Government Sunset Review Act.

Additionally, the bill provides that it does not impact existing law relating to discovery of records and information that are otherwise discoverable under the Florida Rules of Civil Procedure, or any statutory provision allowing discovery or presuit disclosure of such records and information for the purpose of civil actions.

The effective date of the bill is upon becoming law. The bill also specifies that certain provisions of the act apply to all private corporations that have purchased or leased public hospitals regardless of whether such purchase or lease occurred prior to the effective date of the act.

**C. SECTION DIRECTORY:**

**Section 1.-** Amends s. 155.40, F.S., to extend certain provisions to the purchaser of such hospital.

**Section 2. -** Provides a public necessity statement.

**Section 3. –** Provides that the act does not operate to change existing law relating to discovery of records and information.

**Section 4. -** Provides that the bill is effective upon becoming law.

**II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT**

**A. FISCAL IMPACT ON STATE GOVERNMENT:**

**1. Revenues:**

This bill does not appear to have a fiscal impact on state government revenues.

**2. Expenditures:**

This bill may have a fiscal impact on state government expenditures because staff responsible for complying with public records requests will require training relating to the newly created public records exemption.

**B. FISCAL IMPACT ON LOCAL GOVERNMENTS:**

**1. Revenues:**

This bill does not appear to have a fiscal impact on local government revenues unless the local government is leasing or selling a public hospital.

**2. Expenditures:**

This bill does not appear to have a fiscal impact on local government expenditures unless the local government is leasing or selling a public hospital.

**C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:**

This bill may have a direct economic impact on lessees or purchasers of public hospitals.

**D. FISCAL COMMENTS:**

The provisions of the bill may impact the lease or sale of public hospitals.

**III. COMMENTS**

**A. CONSTITUTIONAL ISSUES:**

**1. Applicability of Municipality/County Mandates Provision:**

This bill does not require counties or municipalities to spend funds or take action requiring the expenditure of funds. This bill does not reduce the percentage of state tax shared with counties or municipalities. This bill does not reduce the authority that counties or municipalities have to raise revenue.

**2. Other:**

Section 6, Art. III of the State Constitution requires that, "every law shall embrace but one subject and matter properly connected." The bill may violate this provision because it appears to include substantive language as well as a public records and public meetings exemption.

Section 24(c), Art. I of the State Constitution requires that laws enacted pursuant to that subsection shall contain only exemptions from the requirements of subsections (a) or (b), and shall relate to one subject.

Section 24(c), Art. I of the State Constitution also requires that all public records include a public necessity statement that is narrowly drawn. The language in the bill may need to be narrowed in scope in order to meet this provision in the Constitution.

Section 24(c), Art. I, of the State Constitution, additionally requires a two-thirds vote of the members present and voting for passage of a newly created public records or public meetings exemption. Thus, the bill requires a two-thirds vote for passage.

**B. RULE-MAKING AUTHORITY:**

The bill does not appear to create, modify, or eliminate rulemaking authority.

**C. DRAFTING ISSUES OR OTHER COMMENTS:**

As a private corporation is not subject to Florida's public records and open meeting laws except when acting on behalf of a public agency,<sup>6</sup> such an exemption—particularly one drawn to a law which has been declared unconstitutional—may be problematic.

---

<sup>6</sup> The definition of "agency" for purposes of ch. 119, F.S., includes a "a public or private agency, person, partnership, corporation, or business entity acting on behalf of any public agency." See, also, s. 24(a) of Art. I of the State Constitution which provides that the constitutional right of access to public records extends to "any public body, officer, or employee of the state, or persons acting on their behalf..." Recognizing the need to provide criteria for determining when a private entity is acting on behalf of a public agency, the Supreme Court has adopted a "totality of factors" approach which includes: the level of public funding; commingling of funds; whether the activity was conducted on publicly-owned property; whether services contracted for are an integral part of the public agency's chosen decision-making process; whether the private entity is performing a governmental function or a function which the public agency otherwise would perform; the extent of the public agency's involvement with, regulation of, or control over the private entity; whether the private entity was created by the public agency; whether the public agency has a substantial financial interest in the private entity; and for whose benefit the private entity is functioning. News and Sun-Sentinel Company v. Schwab, Twitty & Hanser Architectural Group, Inc., 596 So. 2d 1029 (Fla. 1992).

Section 3 of the bill appears unnecessary because public records exemptions do not impact the Florida Rules of Civil Procedure.

#### **IV. AMENDMENTS/COMMITTEE SUBSTITUTE & COMBINED BILL CHANGES**

On March 8, 2005, the Health Care Regulation Committee adopted a strike-all amendment and reported the bill favorably with committee substitute. The amendment provided a public necessity statement for the public records exemption, changed the bill to a public records exemption bill, and provided that the bill will take effect upon becoming law.



HB 675

2006  
CS

## CHAMBER ACTION

---

The Health Care Regulation Committee recommends the following:

**Council/Committee Substitute**

Remove the entire bill and insert:

A bill to be entitled

An act relating to public records and public meetings; amending s. 155.40, F.S.; clarifying construction with respect to actions of a lessee or purchaser of a county, district, or municipal hospital; providing an exemption from public records requirements for the records of a private corporation that purchases or leases a public hospital; providing for retroactive effect of the exemption; providing an exemption from public meetings requirements for that portion of a meeting of the governing board of a private corporation that leases or purchases a public hospital at which confidential and exempt information is presented or discussed; providing an exemption from public records requirements for any records generated during a meeting of the governing board of the private corporation that leases or purchases a public hospital which are closed to the public; providing for retroactive effect of the exemption; providing for future

Page 1 of 5

HB 675

2006  
CS

24 review and repeal; providing a finding of public  
25 necessity; clarifying operation of the act; providing an  
26 effective date.

27  
28 Be It Enacted by the Legislature of the State of Florida:

29  
30 Section 1. Subsection (7) of section 155.40, Florida  
31 Statutes, is amended, and subsection (8) is added to that  
32 section, to read:

33 155.40 Sale or lease of county, district, or municipal  
34 hospital; confidentiality of records; exemption from public  
35 meetings requirements.--

36 (7) The lessee or purchaser of a hospital, pursuant to  
37 this section or any special act of the Legislature, ~~operating~~  
38 ~~under a lease~~ shall not be construed to be "acting on behalf of"  
39 the lessor or seller as that term is used in statute, unless the  
40 lease or purchase document expressly provides to the contrary.

41 (8)(a) The records of a private corporation that leases or  
42 purchases a public hospital pursuant to this section are  
43 confidential and exempt from s. 119.07(1) and s. 24(a), Art. I  
44 of the State Constitution. This paragraph applies to records  
45 held by a private corporation that leases or purchases a public  
46 hospital pursuant to this section before, on, or after the  
47 effective date of this exemption.

48 (b) That portion of a meeting of the governing board of a  
49 private corporation that leases or purchases a public hospital  
50 pursuant to this section at which information is presented or  
51 discussed that is confidential and exempt under paragraph (a) is

HB 675

2006  
CS

52 closed to the public and exempt from s. 286.011 and s. 24(b),  
53 Art. I of the State Constitution.

54 (c) Any records generated during a meeting of the  
55 governing board of the private corporation that leases or  
56 purchases a public hospital pursuant to this section that are  
57 closed to the public under paragraph (b), such as minutes, tape  
58 recordings, videotapes, transcriptions, or notes, are  
59 confidential and exempt from s. 119.07(1) and s. 24(a), Art. I  
60 of the State Constitution. This paragraph applies to records  
61 generated during a meeting of the governing board of a private  
62 corporation that leases or purchases a public hospital pursuant  
63 to this section before, on, or after the effective date of this  
64 exemption.

65 (d) This subsection is subject to the Open Government  
66 Sunset Review Act in accordance with s. 119.15 and shall stand  
67 repealed on October 2, 2011, unless reviewed and saved from  
68 repeal through reenactment by the Legislature.

69 Section 2. The Legislature finds that it is a public  
70 necessity that the records of a private corporation that  
71 purchases a public hospital pursuant to s. 155.40, Florida  
72 Statutes, be made confidential and exempt from public records  
73 requirements. It is the further finding of the Legislature that  
74 that portion of a meeting of the governing board of a private  
75 corporation that leases or purchases a public hospital pursuant  
76 to s. 155.40, Florida Statutes, at which confidential and exempt  
77 information is presented or discussed be closed to the public  
78 and exempt from public meetings requirements. It is the further  
79 finding of the Legislature that any records generated during a

HB 675

2006  
CS

80 meeting of the governing board of the private corporation that  
81 leases or purchases a public hospital pursuant to s. 155.40,  
82 Florida Statutes, that are closed to the public be made  
83 confidential and exempt from public records requirements. The  
84 Legislature has always intended that private entities that  
85 purchase public hospitals are not subject to the public records  
86 and public meetings laws of the state because the private  
87 entities do not act on behalf of the public entities from whom  
88 they purchase a public hospital. Some recent court decisions,  
89 however, have found that private entities that purchase public  
90 hospitals are subject to public records and public meetings laws  
91 and have failed to recognize that the public entity does not  
92 retain any control over the private entity or the formerly  
93 public hospital following the sale of a public hospital to a  
94 private entity. Therefore, the Legislature finds that it is a  
95 public necessity to confirm its intent that private entities  
96 that purchase formerly public hospitals are not subject to the  
97 public records laws or public meetings laws of the state. With  
98 respect to lessees of public hospitals, such lessees also do not  
99 act on behalf of the public entity except as provided in this  
100 section and are not subject to the public records or public  
101 meetings laws of the state. To find otherwise would place  
102 private entities that purchase or lease public hospitals at a  
103 competitive disadvantage compared to other private entities that  
104 own or lease private hospitals that were not formerly public  
105 hospitals and would serve as a disincentive to private entities  
106 considering the purchase or lease of a public hospital. Public  
107 entities choose to sell or lease their public hospitals to

Page 4 of 5

CODING: Words ~~stricken~~ are deletions; words underlined are additions.

hb0675-01-c1

HB 675

2006

CS

108 private corporations when the public entity is no longer able to  
109 operate the hospital in a fiscally responsible manner and where  
110 taxpayers would otherwise be required to finance the operations  
111 of the hospital beyond indigent care. If the public records laws  
112 and public meetings laws apply to private corporations that  
113 purchase or lease public hospitals, public entities may find it  
114 difficult, if not impossible, to find a private corporation that  
115 is willing to purchase or lease a public hospital. This could  
116 force the public entity to close the hospital, which would  
117 result in a reduction in health care services to the public, or  
118 continue operating the hospital using public tax dollars to  
119 subsidize recurring losses. Neither of these options is in the  
120 best interest of the public. The Legislature, therefore, finds  
121 that it is a public necessity to confirm that the state's public  
122 records laws and public meetings laws do not apply to private  
123 corporations that lease public hospitals where the lessee does  
124 not act on behalf of the public entity. The Legislature further  
125 finds that any private corporation that purchases a public  
126 hospital, regardless of whether the corporation had previously  
127 leased that public hospital, does not act on behalf of the  
128 public entity.

129       Section 3. This act does not operate to change existing  
130 law relating to discovery of records and information that are  
131 otherwise discoverable under the Florida Rules of Civil  
132 Procedure or any statutory provision allowing discovery or  
133 presuit disclosure of such records and information for the  
134 purpose of civil actions.

135       Section 4. This act shall take effect upon becoming a law.



## HOUSE OF REPRESENTATIVES STAFF ANALYSIS

**BILL #:** HB 775 CS



Psychologist Specialties

**SPONSOR(S):** Roberson

**TIED BILLS:**

**IDEN./SIM. BILLS:** SB 1560

---

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1) Health Care Regulation Committee	9 Y, 0 N, w/CS	Hamrick	Mitchell
2) Governmental Operations Committee		Mitchell 	Williamson 
3) Health & Families Council			
4)			
5)			

---

### SUMMARY ANALYSIS

This bill provides criteria and rulemaking authority for the Board of Psychology to approve certifying bodies that recognize a psychologist or school psychologist as a "certified psychology specialist" or a "psychology diplomate." The bill defines the terms "specialist" and "diplomate."

The bill prohibits a licensed psychologist or school psychologist from representing that he or she is a certified psychology specialist or a psychology diplomate unless that recognition is from a certifying body that has been approved by the Board of Psychology.

The bill permits a licensed psychologist or school psychologist to indicate the services offered and whether his or her practice is limited to one or more types of services as long as it accurately reflects their scope of practice.

The bill does not appear to have a fiscal impact on local governments. The fiscal impact on state government expenditures appears to be minimal implementation costs of rulemaking and processing.

## FULL ANALYSIS

### I. SUBSTANTIVE ANALYSIS

#### A. HOUSE PRINCIPLES ANALYSIS:

Provide limited government – This bill authorizes the Board of Psychology to adopt rules for approving entities that recognize psychology specialists and psychology diplomates.

Safeguard individual liberty – The bill prohibits a licensed psychologist or school psychologist from making certain professional titles unless those titles were conferred by an entity approved by the Board of Psychology.

Promote Personal Responsibility – The bill limits the use of certain professional titles by psychologists and school psychologists.

#### B. EFFECT OF PROPOSED CHANGES:

##### Psychology and School Psychology Licensing and Specialties

Chapter 490, Florida Statutes, is the Psychological Services Act.<sup>1</sup> The Psychological Services Act creates the Board of Psychology within the Department of Health.<sup>2</sup> The Board of Psychology is responsible for certifying that applicants meet the criteria for licensure by examination<sup>3</sup> or licensure by endorsement.<sup>4</sup> The Department of Health then issues the applicant a license<sup>5</sup> as a psychologist or a school psychologist.<sup>6</sup> There are approximately 3,439 active licensed psychologists and 572 active school psychologists.<sup>7</sup>

There is, however, no authority for the Board of Psychology or the Department of Health to recognize specialties in psychology. As such, licensed psychologists and school psychologists, may use a psychological specialty recognized by a private entity or certifying body as long as the use of the specialty recognition does not violate statutory disciplinary standards.<sup>8</sup>

The use of psychological specialties, however, has implications for the public and the legal system,<sup>9</sup> which must evaluate the varying specialty credentials of psychologists and school psychologists. Some certifying entities require review of credentials, documentation, and work sample, as well as a comprehensive oral or written examination.<sup>10</sup> Yet, other boards are referred to as “vanity boards” and require very little documentation other than a brief one-page or two-page application form and a fee.<sup>11</sup>

---

<sup>1</sup> Fla. Stat. § 490.001 (2005).

<sup>2</sup> Fla. Stat. § 490.004 (2005) (The Board of Psychology is composed of seven members appointed by the Governor and confirmed by the Senate. Five members of the Board of Psychology must be state-licensed psychologists and two members must be citizens with no connection to the practice of psychology. Members of the Board of Psychology serve four year terms.).

<sup>3</sup> Fla. Stat. § 490.005 (2005).

<sup>4</sup> Fla. Stat. § 490.006 (2005).

<sup>5</sup> See, e.g., § 490.005(1) (2005).

<sup>6</sup> See, e.g., § 490.003(4) (2005) (defining the “practice of psychology” as the observation, description, evaluation, interpretation, and modification of human behavior, by the use of scientific and applied psychological principles, methods, and procedures, for the purpose of describing, preventing, alleviating, or eliminating symptomatic, maladaptive, or undesired behavior and of enhancing interpersonal behavioral health and mental or psychological health).

<sup>7</sup> Fla. Dep’t of Health, 2004-2005 Annual Report, available at [http://www.doh.state.fl.us/mqa/Publications/04-05mqa\\_ar.pdf](http://www.doh.state.fl.us/mqa/Publications/04-05mqa_ar.pdf), p. 34 (last visited Apr. 11, 2006).

<sup>8</sup> See, e.g., Fla. Stat. § 490.009(1)(d) (2005) (false, deceptive, or misleading advertising).

<sup>9</sup> Psychologists, for example, render opinions to courts on issues such as competency to stand trial.

<sup>10</sup> Frank M. Dattilio & Robert L. Sadoff, How Expert is Your Mental Health Expert?, 27 Pa. Law. 28, 31 (Jan./Feb. 2005) (specifically referencing the American Board of Professional Psychology).

<sup>11</sup> *Id.* at 32.



## Recognizing Psychology Specialties

This bill allows the Board of Psychology to establish criteria, by rule, to approve certifying bodies that recognize a psychologist or a school psychologist as a “certified psychology specialist or a “psychology diplomate.” The bill requires the Board of Psychology to utilize the following criteria in approving certifying bodies:

- Peer review and self study;
- Established standards;
- Assessment of competency characteristics of the specialty;
- Administrative support; and
- Unified relationship to the public and the profession.

The bill also defines the term “specialist” or “diplomate” to mean a psychologist with recognized competency acquired through an organized sequence of formal education, training, experience, and professional standing.

The bill prohibits a licensed psychologist or school psychologist from representing that he or she is a certified psychology specialist or a psychology diplomate unless that recognition is from a certifying body that has been approved by the Board of Psychology.

The bill permits a licensed psychologist or school psychologist to indicate the services offered or whether his or her practice is limited to one or more types of services as long as it accurately reflects their scope of practice.

### C. SECTION DIRECTORY:

Section 1: Creates section 490.0149, Florida Statutes, to provide a definition; to limit the use of certain specialty titles; to authorize rulemaking; and to allow offered or limited services to be indicated.

Section 2: Provides an effective date of July 1, 2006.

## **II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT**

### A. FISCAL IMPACT ON STATE GOVERNMENT:

#### 1. Revenues:

This bill does not appear to have a fiscal impact on state government revenues.

#### 2. Expenditures:

This bill appears to have a fiscal impact on state government expenditures through minimal increases in rulemaking, entity processing, and complaint processing costs.

### B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

#### 1. Revenues:

This bill does not appear to have a fiscal impact on local government revenues.

#### 2. Expenditures:

This bill does not appear to have a fiscal impact on local government expenditures.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

This bill will have a direct economic impact on the representation and advertising of psychologists and school psychologists who utilize psychological specialties. This bill also will have a direct economic impact on certifying bodies of psychological specialties.

D. FISCAL COMMENTS:

None.

**III. COMMENTS**

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

This bill does not require counties or municipalities to spend funds or take an action requiring the expenditure of funds. This bill does not reduce the percentage of a state tax shared with counties or municipalities. This bill does not reduce the authority that counties municipalities have to raise revenue.

2. Other:

First Amendment

To the extent this bill permits restrictions on professional advertising, it may be subject to challenge under the First Amendment of the United States Constitution. Courts, however, have previously upheld similar restrictions.

B. RULE-MAKING AUTHORITY:

This bill authorizes the Board of Psychology to adopt rules for approving entities that recognize psychology specialists and psychology diplomates.

C. DRAFTING ISSUES OR OTHER COMMENTS:

Drafting Issue: Consistent Terminology

The bill uses the terms "specialist," "diplomate," "certified psychology specialist," "psychology diplomate," and "board-certified psychology specialist." The sponsor may wish to use consistent terminology throughout the bill.

Drafting Issue: Criteria

The sponsor may wish to consider two changes to the section of the bill that provides the criteria for the Board of Psychology to use in approving certifying bodies. First, the reference to subsection (2) is potentially confusing. Second, the criteria may not be stringent enough to prevent a "vanity board" from meeting the criteria and being approved.

Drafting Issue: More Specific Rulemaking Authority

As the Department of Health is responsible for rulemaking for school psychologists, the sponsor may wish to provide more specific rulemaking authority.<sup>12</sup>

<sup>12</sup> Dep't of Health, HB 775 CS (2006) Bill Analysis, Economic Statement, and Fiscal Note (Apr. 11, 2006).

#### Other Comments: American Psychological Association

According to a telephone conversation between the Health Care Regulation Committee and staff of the American Psychology Association (“APA”), the APA recognizes that there is a problem nationally with individuals who hold themselves out as a board-certified specialist or a diplomate, but who have “suspect training” or “vanity credentials.”

The APA has discussed the possibility of developing criteria that may be used to identify an appropriate certifying body of legitimate psychology specialties. To date, there has been no policy action by the APA.<sup>13</sup>

#### Other Comments: The American Board of Professional Psychology

One example of a certifying body is the American Board of Professional Psychology (ABPP), which was incorporated in 1947 with the support of the American Psychological Association. The American Board of Professional Psychology currently recognizes 13 specialty boards.<sup>14</sup>

The ABPP provides the following criteria for organizations to determine the competency of certifying bodies that provide certified specialties in professional psychology:<sup>15</sup>

- National in scope, appropriately incorporating standards of the profession and collaborating closely with organizations related to specialization in psychology.
- Have clearly described purposes, related by-laws, policies, and procedures which are accountable to the public, its certified specialists, and the profession.
- Develop and implement examinations designed to assess the competencies required to provide quality services in the specialties it certifies.
- Not be a governmental, membership, advocacy, or accrediting body.
- Have organizational and financial stability with professional and office support staff.
- Be governed by a single, national in scope, not-for-profit corporation comprised of a certified specialist Trustee (Board Member) from each of its multiple, member Specialty Boards as well as public member representation. The multiple board structure provides a continuing peer review of the organization's activities. The governing board has formal procedures for the selection and tenure of Trustees.

#### **IV. AMENDMENTS/COMMITTEE SUBSTITUTE & COMBINED BILL CHANGES**

On April 4, 2006, the Health Care Regulation Committee adopted a “strike-all” amendment that made the following changes:

---

<sup>13</sup> E-mail from the Deputy Exec. Dir. for Educ., Am. Psychological Ass’n (on file with the Health Care Regulation Comm.).

<sup>14</sup> (1) The American Board of Cognitive and Behavioral Psychology; (2) The American Board of Clinical Psychology; (3) The American Board of Clinical Child and Adolescent Psychology; (4) The American Board of Clinical Health Psychology; (5) The American Board of Clinical Neuropsychology; (6) The American Board of Counseling Psychology; (7) The American Board of Family Psychology; (8) The American Board of Forensic Psychology; (9) The American Board of Group Psychology; (10) The American Board of Psychoanalysis in Psychology; (11) The American Board of Rehabilitation Psychology; (12) The American Board of School Psychology; and (13) The American Board of Organizational and Business Consulting Psychology. According to the ABPP, practice activities in any specialty seldom are exclusive to the specialty and most practice activities are shared with the general practice of professional psychology. The pattern of practice activities, including limiting the scope of practice, and focus upon more complex or unique problems or technologies is more relevant in defining a specialty together with advanced education, training, and experience.

<sup>15</sup> American Board of Professional Psychology, Standards for the Purpose and Structure of a Body Certifying Psychologists as Specialists in Professional Psychology, available at [http://www.abpp.org/brochures/general\\_brochure.htm](http://www.abpp.org/brochures/general_brochure.htm) (last visited Apr. 5, 2006).

- Removed the specific mention of the American Board of Professional Psychology as a recognized agency;
- Added a definition of specialist or diplomate;
- Provided the criteria that the board must use in establishing specific criteria for the approval of certifying bodies; and
- Made a more specific reference to “certified psychology specialists” or “psychology diplomate” and removes the general reference to “specialist” or “diplomate”.

The bill, as amended, was reported favorably as a committee substitute.

HB 775

2006  
CS

## CHAMBER ACTION

The Health Care Regulation Committee recommends the following:

**Council/Committee Substitute**

Remove the entire bill and insert:

A bill to be entitled

An act relating to psychologist specialties; creating s. 490.0149, F.S.; providing a definition; specifying the circumstances under which a psychologist may hold himself or herself out as a certified psychology specialist or psychology diplomate; requiring the Board of Psychology to adopt rules and establish specified criteria for the approval of certifying bodies; specifying that a person licensed under ch. 490, F.S., may specify the types of services he or she provides; providing an effective date.

Be It Enacted by the Legislature of the State of Florida:

Section 1. Section 490.0149, Florida Statutes, is created to read:

490.0149 Specialties.--

(1) As used in this section, the term "specialist" or "diplomate" means a psychologist with recognized special

HB 775

2006  
CS

23 competency acquired through an organized sequence of formal  
24 education, training, experience, and professional standing.

25 (2) A person licensed as a psychologist or school  
26 psychologist may not hold himself or herself out as a certified  
27 psychology specialist or psychology diplomate unless the person  
28 has received formal recognition as a board-certified psychology  
29 specialist or psychology diplomate from a recognized certifying  
30 body that has been approved by the board.

31 (3) The board shall adopt rules pursuant to ss. 120.536(1)  
32 and 120.54 to establish criteria for approval of certifying  
33 bodies pursuant to the requirements of subsection (2). The  
34 criteria shall include:

35 (a) Peer review and self study.

36 (b) Established standards.

37 (c) Assessments of competencies characteristic of the  
38 specialty.

39 (d) Administrative support.

40 (e) A unified relationship to the public and the  
41 profession.

42 (4) A person licensed under this chapter may indicate the  
43 services he or she offers and may indicate that his or her  
44 practice is limited to one or more types of services when this  
45 accurately reflects his or her scope of practice.

46 Section 2. This act shall take effect July 1, 2006.



## HOUSE OF REPRESENTATIVES STAFF ANALYSIS

**BILL #:** HB 911 CS

Department of Management Services

**SPONSOR(S):** Bullard

**TIED BILLS:**

**IDEN./SIM. BILLS:** SB 678

---

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1) Domestic Security Committee	6 Y, 0 N, w/CS	Wiggins	Newton
2) State Administration Appropriations Committee	7 Y, 0 N	Dobbs	Belcher
3) Governmental Operations Committee		Brown <i>EB</i>	Williamson <i>Law</i>
4) State Administration Council			
5) _____			

---

### SUMMARY ANALYSIS

The bill requires the Department of Management Services to include in its annual state facilities inventory report a list of state-owned facilities that have unoccupied space suitable for use as an emergency shelter. The list must be updated annually by May 31 and must be listed by county and municipality.

The Department of Management Services has not reported a fiscal impact for the bill.



## FULL ANALYSIS

### I. SUBSTANTIVE ANALYSIS

#### A. HOUSE PRINCIPLES ANALYSIS:

**Provide Limited Government** – The bill creates an additional reporting requirement.

**Maintain Public Security** -The list of potential shelters created by this legislation may allow counties and municipalities to better know what buildings may be used as shelters in an emergency.

#### B. EFFECT OF PROPOSED CHANGES:

##### Current Situation

Pursuant to the “Capital Facilities Planning and Budgeting Act” in ss. 216.015-216.016, F.S., the Department of Management Services (DMS) is required to take inventory of current facilities owned, leased, rented, or otherwise occupied by any agency of the state or judicial branch.<sup>1</sup> To fully comply with this requirement, DMS produces an annual report, which is available online.<sup>2</sup> Facilities not incorporated in this report include those of the State Board of Administration, Board of Regents, the Community College System, Water Management Districts, local school districts, private correctional facilities and any facilities with less than three thousand square feet in gross area.<sup>3</sup>

There are several components to the annual inventory. For example, the State Facility Inventory program includes facility ownership, management responsibility, date assessed, assessor, location, occupancy, size, and other general data. Another component, the Lease Inventory Program, consists of a recording of *all* state leases and a record of the ownership of the facilities, square footage, costs, beginning and ending dates, and other general data for these leases.

DMS, pursuant to s. 252.385(4) (b) and (c), F.S., is required to incorporate provisions into state agency lease agreements for the use of suitable leased public facilities as public hurricane evacuation shelters. DMS also is required to consult with local and state emergency management agencies to assess DMS facilities and identify the extent to which each facility has public hurricane evacuation shelter space.<sup>4</sup>

The Department of Community Affairs, Division of Emergency Management (“Division”), must prepare a state comprehensive emergency management plan that can be integrated into and coordinated with the emergency management plans and programs of the Federal Government as required in the “State Emergency Management Act” in ss. 252.31-252.60, F.S.<sup>5</sup> The plan must include a shelter component with specific planning provisions and promote shelter activity coordination between the public, private, and nonprofit sectors. This component must include strategies to ensure the availability of adequate public shelter space in each region of the state; establish strategies for refuge-of-last-resort programs; assist local emergency management efforts to ensure that adequate staffing plans exist for all shelters, including medical and security personnel; provide for a post disaster communications system for public shelters; establish model shelter guidelines for operation, registration, inventory, power generation capability, information management, and staffing; and provide guidance for sheltering people with

---

<sup>1</sup> Section 216.015(3)(b), F.S.

<sup>2</sup> <http://fcn.state.fl.us/dms/dbc/mgt/inventory.html>

<sup>3</sup> According to the Executive Summary of the 2005 Inventory Annual Report.

<sup>4</sup> Suitable leased public facilities include leased public facilities that are solely occupied by state agencies and have at least 2,000 square feet of net floor area in a single room or, in a combination of rooms, having a minimum of 400 square feet in each room. [Section 252.385 (4)(b), F.S.]

<sup>5</sup> Section 252.35 (2)(a), F.S.

special needs.<sup>6</sup> The Division has integrated the State Comprehensive Emergency Management Plan (February 1, 2004 Edition) by citation into its rules. The plan includes, in Appendix VI, the coordination of activities involved with the emergency provision of temporary shelters.<sup>7</sup>

The Division currently manages a program for surveying existing public and private buildings, with written owner agreement, to identify which facilities are appropriately designed and located to serve as shelters.<sup>8</sup> Public facilities, including schools, post-secondary education facilities, and other facilities owned or leased by the state or local governments, but excluding hospitals or nursing homes, which are suitable for use as public hurricane evacuation shelters must be made available at the request of the local emergency management agencies.<sup>9</sup>

#### Proposed Changes

The bill requires DMS to compile a list of state-owned facilities that have unoccupied space which are available for use as emergency shelters during an emergency or other catastrophic event. The list must be organized by county and municipality and must be updated by May 31 of each year.

The bill defines emergency shelters as "suitable" for use as an emergency shelter if they meet the standards set by the American Red Cross, and defines "unoccupied" as "vacant due to suspended operation or nonuse."

#### C. SECTION DIRECTORY:

Section 1 amends s. 252.385, F.S., to require DMS to maintain a list of state-owned facilities that have unoccupied space for use as emergency shelters during storms or other catastrophic events.

Section 2 provides an effective date of July 1, 2006.

### **II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT**

#### A. FISCAL IMPACT ON STATE GOVERNMENT:

##### 1. Revenues:

The bill does not create, modify, amend, or eliminate a state revenue source.

##### 2. Expenditures:

The bill does not create, modify, amend, or eliminate a state expenditure.

#### B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

##### 1. Revenues:

The bill does not create, modify, amend, or eliminate a local revenue source.

##### 2. Expenditures:

The bill does not create, modify, amend, or eliminate a local expenditure.

#### C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

---

<sup>6</sup> Section 252.35 (2)(a)2., F.S.

<sup>7</sup> Rule 9G-2.002, F.A.C.

<sup>8</sup> Section 252.385(2), F.S.

<sup>9</sup> Section 252.385(4)(a), F.S.

**D. FISCAL COMMENTS:**

None.

**III. COMMENTS**

**A. CONSTITUTIONAL ISSUES:**

**1. Applicability of Municipality/County Mandates Provision:**

The bill does not appear to require cities or counties to spend funds or take actions requiring the expenditure of funds; reduce the authority that cities or counties have to raise revenues in the aggregate; or reduce the percentage of a state tax shared with cities or counties.

**2. Other:**

None.

**B. RULE-MAKING AUTHORITY:**

None.

**C. DRAFTING ISSUES OR OTHER COMMENTS:**

None.

**IV. AMENDMENTS/COMMITTEE SUBSTITUTE & COMBINED BILL CHANGES**

On March 22, 2006 the Domestic Security committee adopted the amendment that requires DMS to compile and annually update a list of state-owned facilities that have unoccupied space suitable for use as emergency shelter. The amendment defines emergency shelters as "suitable" for use as an emergency shelter if they meet the standards set by the American Red Cross, and defines "unoccupied" as "vacant due to suspended operation or nonuse." The bill was reported favorably with committee substitute.

HB 911

2006  
CS

CHAMBER ACTION

The Domestic Security Committee recommends the following:

**Council/Committee Substitute**

Remove the entire bill and insert:

A bill to be entitled

An act relating to the use of state facilities as emergency shelters; amending s. 252.385, F.S.; providing for use of certain state facilities as emergency shelters; requiring the Department of Management Services to list state-owned facilities that are suitable for use as emergency shelters; providing requirements with respect to such listing; defining terms; providing an effective date.

Be It Enacted by the Legislature of the State of Florida:

Section 1. Paragraph (a) of subsection (4) of section 252.385, Florida Statutes, is amended, and paragraph (d) is added to that subsection, to read:

252.385 Public shelter space.--

(4)(a) Public facilities, including schools, postsecondary education facilities, and other facilities owned or leased by the state or local governments, but excluding hospitals or

HB 911

2006  
CS

24 nursing homes, which are suitable for use as public hurricane  
25 evacuation shelters shall be made available at the request of  
26 the local emergency management agencies. Such agencies shall  
27 coordinate with the appropriate school board, university,  
28 community college, state agency, or local governing board when  
29 requesting the use of such facilities as public hurricane  
30 evacuation shelters.

31       (d) The Department of Management Services shall include in  
32 the annual state facilities inventory report required under ss.  
33 216.015-216.016 a separate list of state-owned facilities,  
34 including, but not limited to, meeting halls, auditoriums,  
35 conference centers, and training centers that have unoccupied  
36 space suitable for use as an emergency shelter during a storm or  
37 other catastrophic event. Facilities must be listed by the  
38 county and municipality where the facility is located and must  
39 be made available in accordance with paragraph (a). As used in  
40 this paragraph, the term "suitable for use as an emergency  
41 shelter" means meeting the standards set by the American Red  
42 Cross for a hurricane evacuation shelter, and the term  
43 "unoccupied" means vacant due to suspended operation or nonuse.  
44 The list must be updated by May 31 of each year.

45       Section 2. This act shall take effect July 1, 2006.



## HOUSE OF REPRESENTATIVES STAFF ANALYSIS

**BILL #:** HB 1117  
**SPONSOR(S):** Greenstein  
**TIED BILLS:** HB 1115

Public Records

**IDEN./SIM. BILLS:** SB 2076

---

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1) <u>Transportation Committee</u>	<u>15 Y, 0 N</u>	<u>Pugh</u>	<u>Miller</u>
2) <u>Governmental Operations Committee</u>	<u></u>	<u>Williamson</u>	<u>Williamson</u>
3) <u>State Infrastructure Council</u>	<u></u>	<u></u>	<u></u>
4) <u></u>	<u></u>	<u></u>	<u></u>
5) <u></u>	<u></u>	<u></u>	<u></u>

---

### SUMMARY ANALYSIS

In 2003, the South Florida Regional Transportation Authority was created to replace the Tri-County Commuter Rail Authority (Tri-Rail) and to develop regional public-transit planning and infrastructure for Miami-Dade, Broward, and Palm Beach counties. It is a public agency supported by federal, state, and local tax dollars. Among its powers is the ability to acquire, purchase, and lease real property.

HB 1117 creates a public records exemption for appraisal reports, offers, and counteroffers related to land acquisition by the South Florida Regional Transportation Authority (the authority) until execution of an option contract, or barring that, until 30 days before a purchase or agreement comes before the authority for approval. The bill allows the authority to disclose, at its discretion, appraisal reports to property owners or to third parties that are assisting in land acquisition, who must maintain the confidentiality of the appraisals.

The bill provides for future review and repeal of the exemption, provides a statement of public necessity, and provides a contingent effective date.

The bill could have a minimal fiscal impact on the authority.

**The bill requires a two-thirds vote of the members present and voting for passage.**

## FULL ANALYSIS

### I. SUBSTANTIVE ANALYSIS

#### A. HOUSE PRINCIPLES ANALYSIS:

Provide limited government -- HB 1117 delays public access to appraisal reports, offers, and counteroffers related to land purchases by the South Florida Regional Transportation Authority.

#### B. EFFECT OF PROPOSED CHANGES:

##### South Florida Regional Transportation Authority

In an attempt to ease the disruptions created for commuters while it was six-laning I-95 in the mid-1980s, the Department of Transportation purchased an 81-mile rail corridor from CSXT for \$264 million and began building a commuter train system. Under terms of the sale, CSXT continued to operate its freight trains in the corridor; maintained the tracks, buildings, and signaling; and dispatched all trains using the tracks. In 1989, the Legislature made the temporary commuter rail more permanent, passing the Tri-County Commuter Rail Authority Act as Part 1 of Chapter 343, F.S., and creating a commuter railroad to serve Miami-Dade, Broward, and Palm Beach counties.

In 2003, the Legislature passed SB 686, which replaced the "Tri-Rail" authority with the "South Florida Regional Transportation Authority." The new transportation authority is empowered to construct, finance, and manage a variety of mass transit options, not just commuter rail, as an integrated system. It has numerous powers and responsibilities, including the power to acquire, sell, and lease property; to use eminent domain; to enter into purchasing agreements and other contracts; to enforce collection of system rates, fees, and other charges; and to approve revenue bonds issued on its behalf by the State Division of Bond Finance. It has a nine-member board comprised of county commissioners, citizens, and a Florida Department of Transportation district secretary. Currently, it is supported by contributions of local tax revenues from the three member counties, along with federal and state transportation funds to finance its capital projects.

##### Open Records Law

Article I, s. 24(a), Florida Constitution, sets forth the state's public policy regarding access to government records. The section guarantees every person a right to inspect or copy any public record of the legislative, executive, and judicial branches of government. The Legislature, however, may provide by general law for the exemption of records from the requirements of Article I, s. 24(a), Florida Constitution. The general law must state with specificity the public necessity justifying the exemption (public necessity statement) and must be no broader than necessary to accomplish its purpose. Public policy regarding access to government records also is addressed in the Florida Statutes.

Chapter 119, F.S., more completely addresses the issues of public records. Section 119.07(1), F.S., also guarantees every person a right to inspect, examine, and copy any state, county, or municipal record. Section 119.15, F.S., the "Open Government Sunset Review Act," sets forth a legislative review process that requires newly created or expanded exemptions to include an automatic repeal of the exemption on October 2nd of the fifth year after enactment or substantial amendment, unless the Legislature reenacts the exemption. It provides that a public records or public meetings exemption may be created or maintained only if it serves an identifiable public purpose, and may be no broader than is necessary to meet one of the following public purposes:

- Allowing the state or its political subdivisions to effectively and efficiently administer a governmental program, which administration would be significantly impaired without the exemption;
- Protecting sensitive personal information that, if released, would be defamatory or would jeopardize an individual's safety. However, only the identity of an individual may be exempted under this provision; or
- Protecting trade or business secrets.



### Effect of Proposed Changes

The bill creates a public records exemption for appraisal reports, offers, and counteroffers related to the authority's land acquisitions until execution of an option contract, or barring that, until 30 days before a purchase or agreement comes before the authority for approval. The authority may disclose such confidential and exempt<sup>1</sup> information to private property owners or to third parties assisting in the land acquisition. The third parties must maintain the confidential and exempt status of the records. In addition, the authority may share and disclose appraisal reports, offers, and counteroffers when joint acquisition of property is contemplated.

In the event that the authority terminates negotiations, the appraisals, offers, and counteroffers become immediately available to the public.

The bill provides for future review and repeal of the exemption on October 2, 2011. It also provides a statement of public necessity and a contingent effective date.

Finally, the bill authorizes the authority to "use as its own appraisals obtained by a third party under contract with the authority to provide such services, provided the appraisals are reviewed and approved by the authority."

### C. SECTION DIRECTORY:

Section 1: Creates s. 343.59, F.S., to create a public records exemption for the South Florida Regional Transportation Authority.

Section 2: Provides a public necessity statement.

Section 3: Provides a contingent effective date.

## II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

### A. FISCAL IMPACT ON STATE GOVERNMENT:

#### 1. Revenues:

This bill does not create, modify, amend, or eliminate a state revenue source.

#### 2. Expenditures:

This bill does not create, modify, amend, or eliminate a state expenditure.

### B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

#### 1. Revenues:

This bill does not create, modify, amend, or eliminate a local revenue source.

#### 2. Expenditures:

See "D.FISCAL COMMENTS" below.

---

<sup>1</sup> There is a difference between information and records that the Legislature has designated exempt from public disclosure and those the Legislature has deemed confidential and exempt. Information and records classified exempt from public disclosure are permitted to be disclosed under certain circumstances. See *City of Riviera Beach v. Barfield*, 642 So. 2d 1135 (Fla. 4th DCA 1994); *Williams v. City of Minneola*, 575 So. 2d 687 (Fla. 5th DCA 1991). If the Legislature designates certain information and records confidential and exempt from public disclosure, such information and records may not be released by the records custodian to anyone other than the persons or entities specifically designated in the statutory exemption. See *Attorney General Opinion 85-62*, August 1, 1985.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

The authority believes withholding immediate disclosure of appraisals, offers, and counteroffers from the public will result in lower acquisition costs for land on which future mass transit projects will be built. These savings could be invested in future land acquisitions to further expand or improve the commuter rail and other public-transit facilities within its service area.

The bill likely could create a fiscal impact on the authority, because staff responsible for complying with public records requests will require training related to the newly created public records exemption. In addition, the authority could incur costs associated with redacting the confidential and exempt information prior to releasing a record.

### III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

The bill does not require counties or municipalities to spend funds or to take an action requiring the expenditure of funds. The bill does not reduce the percentage of a state tax shared with counties or municipalities. The bill does not reduce the authority that municipalities have to raise revenue.

2. Other:

Vote Requirement

Article I, s. 24(c) of the Florida Constitution, requires a two-thirds vote of the members present and voting for passage of a newly created public records or public meetings exemption. The bill creates a public records exemption. Thus, it requires a two-thirds vote for passage.

Public Necessity Statement

Article I, s. 24(c) of the Florida Constitution, requires a public necessity statement for a newly created public records or public meetings exemption. The bill creates a public records exemption. Thus, it includes a public necessity statement.

Separate Bill

Article I, s. 24(c) of the Florida Constitution, requires the creation of public records exemptions in a separate bill. Lines 47 through 50 appear to contain a substantive provision unrelated to the public records exemption, which appears in violation of the State Constitution.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

Other Comments: Confidentiality Travels

The bill requires a third party with access to such confidential and exempt information to maintain the confidential and exempt status of that information. In *Ragsdale v. State*,<sup>2</sup> the Supreme Court held that

[T]he applicability of a particular exemption is determined by the document being withheld, not by the identity of the agency possessing the record . . . the focus in

---

<sup>2</sup> 720 So.2d 203 (Fla. 1998).

determining whether a document has lost its status as a public record must be on the policy behind the exemption and not on the simple fact that the information has changed agency hands.<sup>3</sup>

In *City of Riviera Beach v. Barfield*,<sup>4</sup> the court stated, “[h]ad the legislature intended the exemption for active criminal investigative information to evaporate upon the sharing of that information with another criminal justice agency, it would have expressly provided so in the statute.”<sup>5</sup> As such, the provision is *unnecessary*, because had the Legislature intended for the confidential and exempt status to evaporate then the Legislature would have stated as much.

Drafting Issues: Open Government Sunset Review Act

The bill makes the exemption subject to the Open Government Sunset Review Act of 1995 pursuant to s. 119.15, F.S. In 2005, the Act was renamed the Open Government Sunset Review Act. As such, an amendment is recommended to remove “of 1995”.

Drafting Issues: Public Necessity Statement

Section 1 of the bill creates a public records exemption for appraisal reports, offers, and counteroffers relating to land acquisition by the authority. The public necessity statement, however, discusses the necessity to protect proprietary confidential business information contained in those reports, offers, and counteroffers. It is recommended that the public necessity statement be amended to conform to the public records exemption.

#### **IV. AMENDMENTS/COMMITTEE SUBSTITUTE & COMBINED BILL CHANGES**

None.

---

<sup>3</sup> *Id.* at 206, 207.

<sup>4</sup> 642 So. 2d 1135 (Fla. 4<sup>th</sup> DCA 1994), *review denied*, 651 So. 2d 1192 (Fla. 1995). In *Barfield*, Barfield argued that once the City of West Palm Beach shared its active criminal investigative information with the City of Riviera Beach the public records exemption for such information was waived. Barfield based that argument on a statement from the 1993 *Government-In-The-Sunshine Manual* (a booklet prepared by the Office of the Attorney General). The Attorney General opined, “once a record is transferred from one public agency to another, the record loses its exempt status.” The court declined to accept the Attorney General’s view. As a result, that statement has been removed from the *Government-In-The-Sunshine Manual*.

<sup>5</sup> *Id.* at 1137.

HB 1117

2006

1 A bill to be entitled  
2 An act relating to public records; creating s. 343.59,  
3 F.S.; providing an exemption from public records  
4 requirements for certain appraisal reports, offers, and  
5 counteroffers relating to land acquisition by the South  
6 Florida Regional Transportation Authority; providing that  
7 the exemption expires upon execution of a certain contract  
8 or at a certain time before a purchase contract or  
9 agreement is considered for approval; providing exceptions  
10 to the exemption; providing for future legislative review  
11 and repeal; providing a finding of public necessity;  
12 providing a contingent effective date.

13  
14 Be It Enacted by the Legislature of the State of Florida:

15  
16 Section 1. Section 343.59, Florida Statutes, is created to  
17 read:

18 343.59 Confidentiality of appraisal reports, offers, and  
19 counteroffers.--

20 (1) Appraisal reports, offers, and counteroffers relating  
21 to land acquisition by the authority are confidential and exempt  
22 from the provisions of s. 119.07(1) and s. 24(a), Art. I of the  
23 State Constitution until an option contract is executed or, if  
24 no option contract is executed, until 30 days before a contract  
25 or agreement for purchase is considered for approval by the  
26 authority's governing board. However, the authority may, at its  
27 discretion, disclose appraisal reports to private landowners  
28 during negotiations for acquisitions using alternatives to fee

HB 1117

2006

29 simple techniques if the authority determines that disclosure of  
30 such reports will bring the proposed acquisition to closure. In  
31 the event that negotiations are terminated by the authority, the  
32 appraisal reports, offers, and counteroffers shall become  
33 available pursuant to s. 119.07(1). Notwithstanding the  
34 provisions of this section, the authority may share and disclose  
35 appraisal reports, appraisal information, offers, and  
36 counteroffers when joint acquisition of property is  
37 contemplated. The authority shall maintain the confidentiality  
38 of such appraisal reports, appraisal information, offers, and  
39 counteroffers in conformance with this section except in those  
40 cases in which the authority has exercised discretion to  
41 disclose such information. The authority may disclose appraisal  
42 information, offers, and counteroffers to a third party who has  
43 entered into a contractual agreement with the authority to work  
44 with or on the behalf of or to assist the authority in  
45 connection with land acquisitions. The third party shall  
46 maintain the confidentiality of such information in conformance  
47 with this section. In addition, the authority may use as its own  
48 appraisals obtained by a third party under contract with the  
49 authority to provide such services, provided the appraisals are  
50 reviewed and approved by the authority.

51 (2) Subsection (1) is subject to the Open Government  
52 Sunset Review Act of 1995 in accordance with s. 119.15 and shall  
53 stand repealed on October 2, 2011, unless reviewed and saved  
54 from repeal through reenactment by the Legislature.

55 Section 2. The Legislature finds that it is a public  
56 necessity that proprietary confidential business information

HB 1117

2006

57 contained in appraisal reports, offers, and counteroffers be  
58 kept confidential when held by a local governmental entity or  
59 agency. Disclosure of this proprietary confidential business  
60 information in a local governmental entity's or agency's  
61 possession would adversely affect the goal of the purchase of  
62 lands for the public good using public funds at competitive  
63 prices resulting from negotiations between parties. Further,  
64 each party is entitled to independently obtain appraisal reports  
65 and property value information regarding said property.  
66 Disclosure of the appraisal report or property information by  
67 the governmental entity or agency could create an unfair  
68 disadvantage for the governmental entity or agency during  
69 negotiations. Release of appraisal reports, offers, and  
70 counteroffers could impair full and fair competition between the  
71 negotiating parties. Thus, the public and private harm in  
72 disclosing this information significantly outweighs any public  
73 benefit derived from disclosure, and the public's ability to  
74 scrutinize and monitor agency action is not diminished by  
75 nondisclosure of this information.

76       Section 3. This act shall take effect on the same date  
77 that HB 1115 or similar legislation takes effect, if such  
78 legislation is adopted in the same legislative session or an  
79 extension thereof and becomes law.



## HOUSE OF REPRESENTATIVES STAFF ANALYSIS

**BILL #:** HB 1223                      Florida Retirement System  
**SPONSOR(S):** Machek and others  
**TIED BILLS:**                              **IDEN./SIM. BILLS:** SB 2246

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1) <u>Governmental Operations Committee</u>		Mitchell <i>AM</i>	Williamson <i>RAW</i>
2) <u>Local Government Council</u>			
3) <u>Fiscal Council</u>			
4) <u>State Administration Council</u>			
5) _____			

### SUMMARY ANALYSIS

This bill continues the expansion of the Special Risk Class of the Florida Retirement System by including nine additional classes of employees of correctional and forensic facilities or institutions: unit treatment and rehabilitation specialists; unit treatment and rehabilitation senior supervisors; licensed practical nurses; behavioral program associates; behavioral program specialists; human service workers; and rehabilitation therapists.

The bill makes legislative findings and declares an important state interest.

This bill does not appear to create, modify, or eliminate rulemaking authority.

This bill does not appear to impact local government revenues or expenditures. The bill, however, requires the state, as the public employer of these employees, to pay an additional contribution rate of 10.70 percent of employees' salaries at an estimated statewide cost of \$2,068,546 in Fiscal Year 2006-2007. This increase in the required contribution rate *appears to satisfy the constitutional requirement to fund benefit increases to public retirement or pension systems.*



## FULL ANALYSIS

### I. SUBSTANTIVE ANALYSIS

#### A. HOUSE PRINCIPLES ANALYSIS:

Provides limited government – This bill expands the Special Risk Class to include additional classes of employees of correctional and forensic facilities or institutions.

#### B. EFFECT OF PROPOSED CHANGES:

##### Background on the Florida Retirement System

Chapter 121, Florida Statutes, is the Florida Retirement System Act and it governs the Florida Retirement System (FRS). The FRS is administered by the secretary of the Department of Management Services through the Division of Retirement.<sup>1</sup>

The FRS is the primary retirement plan for employees of state and county government agencies, district school boards, and community colleges and universities.<sup>2</sup> The FRS also has participating employees of 151 cities and 186 independent special districts who have elected to join the system.<sup>3</sup>

The FRS offers a defined benefit plan that provides retirement, disability, and death benefits for nearly 600,000 active members and over 270,000 retirees, surviving beneficiaries, and Deferred Retirement Option Program participants.<sup>4</sup> Members of the FRS belong to one of five membership classes:

Regular Class <sup>5</sup>	570,888 members	88.00%
Special Risk Class <sup>6</sup>	68,466 members	10.59%
Special Risk Administrative Support Class <sup>7</sup>	80 members	0.01%
Senior Management Service Class <sup>8</sup>	6,823 members	1.10%
Elected Officers Class <sup>9</sup>	2,122 members	0.30%

Each class is separately funded through an employer contribution of a percentage of the gross compensation of the member based on the costs attributable to members of that class and as provided in chapter 121, Florida Statutes.<sup>10</sup>

##### The Special Risk Class and its Expansion

The Special Risk Class of the FRS was created to recognize that certain employees, because they perform work that is physically demanding or arduous or that requires extraordinary agility and mental acuity, may need to retire at an earlier age with less service than other types of employees.<sup>11</sup> As such, members of the Special Risk Class can retire at age 55 or with 25 years of creditable service.<sup>12</sup> Members of the Special Risk Class also earn a higher normal retirement benefit of three percent of the

<sup>1</sup> Fla. Stat. § 121.025 (2005).

<sup>2</sup> Fla. Dep't of Mgmt. Serv., *Fla. Div. of Ret. Main Page* (visited Jan. 11, 2006) < <http://www.frs.state.fl.us/>>.

<sup>3</sup> *Id.*

<sup>4</sup> *Id.*

<sup>5</sup> Fla. Stat. § 121.021(12) (2005).

<sup>6</sup> Fla. Stat. § 121.0515 (2005).

<sup>7</sup> Fla. Stat. § 121.0515(7) (2005).

<sup>8</sup> Fla. Stat. § 121.055 (2005).

<sup>9</sup> Fla. Stat. § 121.052 (2005).

<sup>10</sup> See, e.g., Fla. Stat. 121.055(3)(a)1. (2005).

<sup>11</sup> *Id.*

<sup>12</sup> Fla. Stat. § 121.021(29) (2005) (defining normal retirement date; this contrasts with members of the Regular Class who can retire at age 62 or with 30 years of credible service).

member's average final compensation.<sup>13</sup> These increased benefits are funded through higher employer contribution rates: 17.37 percent of gross compensation, effective July 1, 2005, and 21.91 percent, effective July 1, 2006.<sup>14</sup>

The only employees originally in the Special Risk Class under the current statute were law enforcement officers, correctional officers, and firefighters.<sup>15</sup> Starting in 1999, however, the Legislature started dramatically expanding the Special Risk Class:

1999	Emergency Medical Technicians and Paramedics <sup>16</sup>
2000	Community-Based Correctional Probation Officers <sup>17</sup>
2000	The following 24 types of employees of correctional or forensic facilities or institutions who spend at least 75 percent of their time performing duties which involve contact with patients or inmates: dietitians; public health nutrition consultants; psychological specialists; psychologists; senior psychologists; regional mental health consultants; psychological services directors-DCF; pharmacists; senior pharmacists; dentists; senior dentists; registered nurses; senior registered nurses; registered nurse specialists; clinical associates; advanced registered nurse practitioners; advanced registered nurse practitioner specialists; registered nurse supervisors; senior registered nurse supervisors; registered nursing consultants; quality management program supervisors; executive nursing directors; speech and hearing therapists; and pharmacy managers.
2001	Youth Custody Officers <sup>18</sup>
2005	Employees of a law enforcement agency or a medical examiner's office who are employed in a forensic discipline <sup>19</sup>

These additions to the Special Risk Class have caused it to grow by more than 25 percent in the last six years:

There were 54,683 active Special Risk Class members as of June 30, 1999, and 2,355 Deferred Retirement Option Program participants; as of June 30, 2005, there were 71,383 members filling Special Risk Class positions, 68,466 active members and 2,917 Deferred Retirement Option Program participants. Currently, the Special Risk Class makes up nearly 11% of the active FRS membership.<sup>20</sup>

### Continued Expansion of the Special Risk Class

This bill continues the expansion of the Special Risk Class by adding seven classes of employees of

<sup>13</sup> Fla. Stat. § 121.091(1)(a)2.h. (2005) (compared with 1.60 percent to 1.68 percent for members of the Regular Class).

<sup>14</sup> Fla. Stat. 121.71(3) (2005) (compared with 6.67 percent, effective July 1, 2005, and 9.53 percent, effective July 1, 2006, for members of the Regular Class).

<sup>15</sup> Ch. 78-308, Laws of Fla.; codified as Fla. Stat. § 121.0515.

<sup>16</sup> Ch. 99-392, Laws of Fla., § 23.

<sup>17</sup> Ch. 2000-169, Laws of Fla., § 29.

<sup>18</sup> Ch. 2001-125, Laws of Fla., § 43.

<sup>19</sup> Ch. 2005-167, Laws of Fla. § 1; codified as Fla. Stat. § 121.0515(2)(h) (2005) (The member's primary duties and responsibilities must include the collection, examination, preservation, documentation, preparation, or analysis of physical evidence or testimony, or both, or the member must be the direct supervisor, quality management supervisor, or command officer of one or more individuals with such responsibility; the forensic discipline must be recognized by the International Association for Identification and the member must qualify for active membership in the International Association for Identification). See also Int'l Ass'n for Identification at <http://www.theiai.org/> (last visited Mar. 27, 2006).

<sup>20</sup> Dep't of Mgmt. Serv., HB 1223 (2006) Substantive Bill Analysis (Mar. 24, 2006) (on file with dep't) at pp. 3-4) [hereinafter "DMS Analysis"].

correctional or forensic facilities or institutions who spend at least 75 percent of their time performing duties which involve contact with patients or inmates:

- Unit treatment and rehabilitation specialist-F/C (class code 5791);
- Licensed practical nurse F/C (class code 5599);
- Behavioral program associate F/C (class code 5762);
- Behavioral program specialist F/C (class code 5763);
- Human service worker I-F/C (class code 5781);
- Human service worker II-F/C (class code 5784); and
- Rehabilitation therapist F/C (class code 5563).

The bill also expands the Special Risk class by adding two classes of employees of correctional or forensic facilities or institutions who work for the Department of Children and Family Services and spend at least 75 percent of their time performing duties which involve contact with patients or inmates:

- Unit treatment and rehabilitation senior supervisor I-F/C (class code 5793); and
- Unit treatment and rehabilitation senior supervisor II-F/C (class code 5796).

#### Constitutional Requirements for Retirement or Pension System Increases

Article X, section 14 of the Florida Constitution provides that a governmental unit responsible for any retirement or pension system supported wholly or partially by public pension funds may not, after January 1, 1977, provide *any increase in benefits* to members or beneficiaries unless concurrent provisions for funding the increase in benefits are made on a sound actuarial basis.<sup>21</sup> Because employers will pay an additional 10.70 percent of salary for these additional classes of employees of correctional and forensic facilities or institutions, the bill appears to satisfy this constitutional requirement.<sup>22</sup>

#### C. SECTION DIRECTORY:

- Section 1: Creates paragraph (f) within subsection (15) of section 121.021, Florida Statutes, to expand the definition of special risk member to include two types of Department of Children and Family Services employees.
- Section 2: Amends subsection (2)(f) and creates subsection (2)(i) of section 121.0515, Florida Statutes, to include additional types of employees of correctional and forensic facilities or institutions.
- Section 3: Declares a statement of important state interest.
- Section 4: Provides an effective date of July 1, 2006.

### **II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT**

#### A. FISCAL IMPACT ON STATE GOVERNMENT:

##### 1. Revenues:

The Florida Retirement System will receive increased contributions for the additional types of employees of correctional and forensic facilities or institutions.

<sup>21</sup> Part VII of chapter 112, Florida Statutes, the "Florida Protection of Public Employee Retirement Benefits Act," was adopted by the Legislature to implement the provisions of article X, section 14 of the Florida Constitution. This law establishes minimum standards for operating and funding public employee retirement systems and plans. This part is applicable to all units of state, county, special district and municipal governments participating in or operating a retirement system for public employees which is funded in whole or in part by public funds.

<sup>22</sup> DMS Analysis at p. 8.

2. Expenditures:

This bill is expected to have the following fiscal impact on state government expenditures:<sup>23</sup>

Fiscal Year 2006-2007	\$2,068,546
Fiscal Year 2007-2008	\$2,151,287
Fiscal Year 2008-2009	\$2,237,339

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

This bill does not appear to have a fiscal impact on local government revenues.

2. Expenditures:

This bill does not appear to have a fiscal impact on local government expenditures.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

This bill does not appear to have a direct economic impact on the private sector.

D. FISCAL COMMENTS:

The Department of Management Services provided the following fiscal note from the enrolled actuary regarding this bill:

The total cost of \$2,068,546.14 that was calculated for the 2006-07 fiscal year was based upon the current contribution rates for 2005-06 and a 4% payroll growth assumption. The fiscal impact of providing Special Risk Class coverage on a prospective basis for these positions will be funded through the payment of higher required contributions and investment returns on those contributions. Any fiscal impact resulting from a change in class demographics or experience due to the provisions of this bill would be reflected in rates recommended by future valuations and experience studies of the FRS and impact all employers with Special Risk Class members.<sup>24</sup>

### III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

This bill does not appear to require counties or municipalities to spend funds or to take an action requiring the expenditure of funds. This bill does not appear to reduce the percentage of a state tax shared with counties or municipalities. This bill does not appear to reduce the authority that counties or municipalities have to raise revenue.

2. Other:

Article X, Section 14

As previously discussed, benefit increases to public retirement or pension systems may not be made unless funding is concurrently provided for the increase. The Department of Management Services concludes that the bill complies with this constitutional requirement.

<sup>23</sup> *Id.* at p. 8 (these expenditures are based on a payroll growth assumption of 4 percent per annum and use current employer contribution rates).

<sup>24</sup> *Id.* at p. 9.

## B. RULE-MAKING AUTHORITY:

This bill does not appear to create, modify, or eliminate rulemaking authority.

## C. DRAFTING ISSUES OR OTHER COMMENTS:

### Drafting Issue: Classes of Employees

The sponsor may wish to consider adding these employees to the Special Risk Class based on their job duties and responsibilities rather than by class code. The Department of Management Services accurately reflects the problems with using class codes:

- Historically when positions have been added to the Special Risk Class, the positions have been added by title with certification requirements and giving the primary job duties and responsibilities that comprise more than 50% of the employees' required duties in the official position description at the time of being added to the class. This method of adding positions makes it clear what duties are required of the positions being added to the Special Risk Class.
- In the case of State positions, it would also allow Human Resource Management within the Department of Management Services to identify the affected positions and class codes that are covered by the Special Risk Class, thereby maintaining flexibility within the state personnel system as needed without having positions inadvertently covered by the Special Risk Class because the statute specifies the class code. The evaluation would be determined by the identified primary job duties and not only by broadband class codes and position titles. Another draw back to using this type of position listing is that the Department of Corrections has indicated that they only utilize 2 of the positions being added to the Special Risk Class and this bill includes the position of behavior program associate that is not utilized by the Department of Children and Families. Meanwhile, there are more than 500 senior licensed practical nurses at the Department of Corrections that would not be covered by this bill because their position title and class code are not specifically included.<sup>25</sup>

### Drafting Issue: Location of Additions

This bill expands the Special Risk Class by amending an existing paragraph and creating a new paragraph. Changes to the Special Risk Class, however, are generally made as separate additions so it is clear when specific positions were added.<sup>26</sup>

### Other Comments: Continued Expansion of Special Risk

This bill proposes an additional expansion of the Special Risk Class. The Legislature must ultimately determine whether these additional types of employees of correctional and forensic facilities or institutions perform work that is consistent with the intent of the Special Risk Class.<sup>27</sup> The Legislature also must be cognizant, as noted by the Department of Management Services, that this bill may encourage other groups to seek membership in the Special Risk Class or create inequities between different positions.<sup>28</sup>

- Specifically, further expansion of Special Risk Class health care positions only at state correctional and forensic facilities will lead to greater disparity of treatment for similarly situated employees within the Florida Retirement System and lead to even more pressure for similar positions at non-state detention facilities to become included in this class of membership.

---

<sup>25</sup> *Id.* at p. 4.

<sup>26</sup> *Id.* at p. 3.

<sup>27</sup> Fla. Stat. § 121.0515(1) (2005) (work that is physically demanding or arduous or that requires extraordinary agility and mental acuity, may need to retire at an earlier age with less service than other types of employees).

<sup>28</sup> *Id.*

- In general, expansion of the membership of the Special Risk Class encourages other employee groups to seek the higher benefits provided to the Special Risk Class compared to the Regular Class. Such requests are generally based in seeking equity for similar positions not included, member perceptions of working in risky positions, or their proximity to working with other employees covered by the Special Risk Class membership instead of meeting the legislative intent for this membership class.

#### **IV. AMENDMENTS/COMMITTEE SUBSTITUTE & COMBINED BILL CHANGES**

Not applicable.

HB 1223

2006

1                   A bill to be entitled  
2       An act relating to the Florida Retirement System; amending  
3       ss. 121.021 and 121.0515, F.S.; providing membership in  
4       the Special Risk Class for persons employed as certain  
5       treatment and rehabilitation personnel at correctional or  
6       forensic facilities; providing a declaration of important  
7       state interest; providing an effective date.

8  
9   Be It Enacted by the Legislature of the State of Florida:

10  
11       Section 1. Paragraph (f) is added to subsection (15) of  
12       section 121.021, Florida Statutes, to read:

13       121.021 Definitions.--The following words and phrases as  
14       used in this chapter have the respective meanings set forth  
15       unless a different meaning is plainly required by the context:

16       (15)

17       (f) Effective July 1, 2006, the term "special risk member"  
18       includes any member who is employed by the Department of  
19       Children and Family Services and meets the special criteria set  
20       forth in s. 121.0515(2) (i).

21       Section 2. Subsection (2) of section 121.0515, Florida  
22       Statutes, is amended to read:

23       121.0515 Special risk membership.--

24       (2) CRITERIA.--A member, to be designated as a special  
25       risk member, must meet the following criteria:

26       (a) The member must be employed as a law enforcement  
27       officer and be certified, or required to be certified, in  
28       compliance with s. 943.1395; however, sheriffs and elected

HB 1223

2006

29 police chiefs shall be excluded from meeting the certification  
30 requirements of this paragraph. In addition, the member's duties  
31 and responsibilities must include the pursuit, apprehension, and  
32 arrest of law violators or suspected law violators; or the  
33 member must be an active member of a bomb disposal unit whose  
34 primary responsibility is the location, handling, and disposal  
35 of explosive devices; or the member must be the supervisor or  
36 command officer of a member or members who have such  
37 responsibilities; provided, however, administrative support  
38 personnel, including, but not limited to, those whose primary  
39 duties and responsibilities are in accounting, purchasing,  
40 legal, and personnel, shall not be included;

41       (b) The member must be employed as a firefighter and be  
42 certified, or required to be certified, in compliance with s.  
43 633.35 and be employed solely within the fire department of a  
44 local government employer or an agency of state government with  
45 firefighting responsibilities. In addition, the member's duties  
46 and responsibilities must include on-the-scene fighting of  
47 fires, fire prevention, or firefighter training; direct  
48 supervision of firefighting units, fire prevention, or  
49 firefighter training; or aerial firefighting surveillance  
50 performed by fixed-wing aircraft pilots employed by the Division  
51 of Forestry of the Department of Agriculture and Consumer  
52 Services; or the member must be the supervisor or command  
53 officer of a member or members who have such responsibilities;  
54 provided, however, administrative support personnel, including,  
55 but not limited to, those whose primary duties and  
56 responsibilities are in accounting, purchasing, legal, and



HB 1223

2006

57 personnel, shall not be included and further provided that all  
58 periods of creditable service in fire prevention or firefighter  
59 training, or as the supervisor or command officer of a member or  
60 members who have such responsibilities, and for which the  
61 employer paid the special risk contribution rate, shall be  
62 included;

63       (c) The member must be employed as a correctional officer  
64 and be certified, or required to be certified, in compliance  
65 with s. 943.1395. In addition, the member's primary duties and  
66 responsibilities must be the custody, and physical restraint  
67 when necessary, of prisoners or inmates within a prison, jail,  
68 or other criminal detention facility, or while on work detail  
69 outside the facility, or while being transported; or the member  
70 must be the supervisor or command officer of a member or members  
71 who have such responsibilities; provided, however,  
72 administrative support personnel, including, but not limited to,  
73 those whose primary duties and responsibilities are in  
74 accounting, purchasing, legal, and personnel, shall not be  
75 included; however, wardens and assistant wardens, as defined by  
76 rule, shall participate in the Special Risk Class;

77       (d) The member must be employed by a licensed Advance Life  
78 Support (ALS) or Basic Life Support (BLS) employer as an  
79 emergency medical technician or a paramedic and be certified in  
80 compliance with s. 401.27. In addition, the member's primary  
81 duties and responsibilities must include on-the-scene emergency  
82 medical care or direct supervision of emergency medical  
83 technicians or paramedics, or the member must be the supervisor  
84 or command officer of one or more members who have such

HB 1223

2006

85 responsibility. However, administrative support personnel,  
86 including, but not limited to, those whose primary  
87 responsibilities are in accounting, purchasing, legal, and  
88 personnel, shall not be included;

89       (e) The member must be employed as a community-based  
90 correctional probation officer and be certified, or required to  
91 be certified, in compliance with s. 943.1395. In addition, the  
92 member's primary duties and responsibilities must be the  
93 supervised custody, surveillance, control, investigation, and  
94 counseling of assigned inmates, probationers, parolees, or  
95 community controllees within the community; or the member must  
96 be the supervisor of a member or members who have such  
97 responsibilities. Administrative support personnel, including,  
98 but not limited to, those whose primary duties and  
99 responsibilities are in accounting, purchasing, legal services,  
100 and personnel management, shall not be included; however,  
101 probation and parole circuit and deputy circuit administrators  
102 shall participate in the Special Risk Class;

103       (f) The member must be employed in one of the following  
104 classes and must spend at least 75 percent of his or her time  
105 performing duties which involve contact with patients or inmates  
106 in a correctional or forensic facility or institution:

- 107       1. Dietitian (class codes 5203 and 5204);
- 108       2. Public health nutrition consultant (class code 5224);
- 109       3. Psychological specialist (class codes 5230 and 5231);
- 110       4. Psychologist (class code 5234);
- 111       5. Senior psychologist (class codes 5237 and 5238);
- 112       6. Regional mental health consultant (class code 5240);

HB 1223

2006

- 113           7.   Psychological Services Director--DCF (class code 5242);
- 114           8.   Pharmacist (class codes 5245 and 5246);
- 115           9.   Senior pharmacist (class codes 5248 and 5249);
- 116           10.   Dentist (class code 5266);
- 117           11.   Senior dentist (class code 5269);
- 118           12.   Registered nurse (class codes 5290 and 5291);
- 119           13.   Senior registered nurse (class codes 5292 and 5293);
- 120           14.   Registered nurse specialist (class codes 5294 and
- 121           5295);
- 122           15.   Clinical associate (class codes 5298 and 5299);
- 123           16.   Advanced registered nurse practitioner (class codes
- 124           5297 and 5300);
- 125           17.   Advanced registered nurse practitioner specialist
- 126           (class codes 5304 and 5305);
- 127           18.   Registered nurse supervisor (class codes 5306 and
- 128           5307);
- 129           19.   Senior registered nurse supervisor (class codes 5308
- 130           and 5309);
- 131           20.   Registered nursing consultant (class codes 5312 and
- 132           5313);
- 133           21.   Quality management program supervisor (class code
- 134           5314);
- 135           22.   Executive nursing director (class codes 5320 and
- 136           5321);
- 137           23.   Speech and hearing therapist (class code 5406); ~~or~~
- 138           24.   Pharmacy manager (class code 5251);
- 139           25.   Unit treatment and rehabilitation specialist-F/C
- 140           (class code 5791);

HB 1223

2006

- 26. Licensed practical nurse F/C (class code 5599);
- 27. Behavioral program associate F/C (class code 5762);
- 28. Behavioral program specialist F/C (class code 5763);
- 29. Human service worker I-F/C (class code 5781);
- 30. Human service worker II-F/C (class code 5784); or
- 31. Rehabilitation therapist F/C (class code 5563);

(g) The member must be employed as a youth custody officer and be certified, or required to be certified, in compliance with s. 943.1395. In addition, the member's primary duties and responsibilities must be the supervised custody, surveillance, control, investigation, apprehension, arrest, and counseling of assigned juveniles within the community; ~~or~~

(h) The member must be employed by a law enforcement agency or medical examiner's office in a forensic discipline recognized by the International Association for Identification and must qualify for active membership in the International Association for Identification. The member's primary duties and responsibilities must include the collection, examination, preservation, documentation, preparation, or analysis of physical evidence or testimony, or both, or the member must be the direct supervisor, quality management supervisor, or command officer of one or more individuals with such responsibility. Administrative support personnel, including, but not limited to, those whose primary responsibilities are clerical or in accounting, purchasing, legal, and personnel, shall not be included; or-

(i) The member must be employed by the Department of Children and Family Services in one of the following classes and

HB 1223

2006

169 must spend at least 75 percent of his or her time performing  
 170 duties that involve contact with patients or inmates in a  
 171 forensic facility or institution:

172 1. Unit treatment and rehabilitation senior supervisor I-  
 173 F/C (class code 5793); or

174 2. Unit treatment and rehabilitation senior supervisor II-  
 175 F/C (class code 5796).

176 Section 3. The Legislature finds that a proper and  
 177 legitimate state purpose is served when employees and retirees  
 178 of the state and its political subdivisions and the dependents,  
 179 survivors, and beneficiaries of such employees and retirees are  
 180 extended the basic protections afforded by governmental  
 181 retirement systems. These persons must be provided benefits that  
 182 are fair and adequate and that are managed, administered, and  
 183 funded in a sound actuarial manner, as required by s. 14, Art. X  
 184 of the State Constitution and part VII of chapter 112, Florida  
 185 Statutes. Therefore, the Legislature hereby determines and  
 186 declares that this act fulfills an important state interest.

187 Section 4. This act shall take effect July 1, 2006.



## HOUSE OF REPRESENTATIVES STAFF ANALYSIS

**BILL #:** HB 1285                      Public Records Exemptions  
**SPONSOR(S):** Attkisson  
**TIED BILLS:** HB 1283                      **IDEN./SIM. BILLS:**

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1) <u>Economic Development, Trade &amp; Banking Committee</u>	<u>6 Y, 4 N</u>	<u>Carlson</u>	<u>Carlson</u>
2) <u>Governmental Operations Committee</u>	<u></u>	<u>Williamson</u>	<u>Williamson</u>
3) <u>Commerce Council</u>	<u></u>	<u></u>	<u></u>
4) <u></u>	<u></u>	<u></u>	<u></u>
5) <u></u>	<u></u>	<u></u>	<u></u>

### SUMMARY ANALYSIS

Current law provides an exemption from public records requirements for certain information held by the Office of Tourism, Trade and Economic Development, Enterprise Florida, Inc., or county or municipal governmental entities and their employees or agents pursuant to incentive programs for qualified businesses.

The bill will expand the existing exemption to include specific information relating to the "Innovation Incentive Program." The bill expands the existing exemption, provides for future review and repeal of the exemption, provides a statement of public necessity, and provides a contingent effective date.

The bill does not grant rulemaking authority to any administrative agency.

The bill could have a minimal fiscal impact on state and local governments.

**The bill requires a two-thirds vote of the members present and voting for passage.**

## FULL ANALYSIS

### I. SUBSTANTIVE ANALYSIS

#### A. HOUSE PRINCIPLES ANALYSIS:

Provide limited government - The bill decreases access to public records.

#### B. EFFECT OF PROPOSED CHANGES:

##### Public Records Law

Article I, s. 24(a), Florida Constitution, sets forth the state's public policy regarding access to government records. The section guarantees every person a right to inspect or copy any public record of the legislative, executive, and judicial branches of government. The Legislature, however, may provide by general law for the exemption of records from the requirements of Article I, s. 24(a), Florida Constitution. The general law must state with specificity the public necessity justifying the exemption (public necessity statement) and must be no broader than necessary to accomplish its purpose. Public policy regarding access to government records also is addressed in the Florida Statutes.

Chapter 119, F.S., more completely addresses the issue of public records. Section 119.07(1), F.S., also guarantees every person a right to inspect, examine, and copy any state, county, or municipal record.

##### Open Government Sunset Review Act

Section 119.15, F.S., the "Open Government Sunset Review Act," sets forth a legislative review process that requires newly created or expanded exemptions to include an automatic repeal of the exemption on October 2nd of the fifth year after enactment or substantial amendment, unless the Legislature reenacts the exemption. It provides that a public records or public meetings exemption may be created or maintained only if it serves an identifiable public purpose, and may be no broader than is necessary to meet one of the following public purposes:

- Allowing the state or its political subdivisions to effectively and efficiently administer a governmental program, which administration would be significantly impaired without the exemption;
- Protecting sensitive personal information that, if released, would be defamatory or would jeopardize an individual's safety. However, only the identity of an individual may be exempted under this provision; or
- Protecting trade or business secrets.

##### Public Records Exemption for Incentive Programs

Section 288.1067, F.S., provides that certain information held by the Office of Tourism, Trade and Economic Development, Enterprise Florida, Inc., or county or municipal governmental entities and their employees or agents pursuant to incentive programs for qualified businesses<sup>1</sup> is confidential and exempt<sup>2</sup> from the provisions of s. 119.07(1), F.S., and s. 24(a), Art. I of the State Constitution. The specific information includes:

<sup>1</sup> The incentive programs are the Capital Investment Tax Credit Program (s. 220.191), Qualified Defense Contractor Tax Refund Program (s. 288.1045), Qualified Target Industry Tax Refund Program (s. 288.106), High Impact Performance Grant Program (s. 288.108) and the Quick Action Closing Fund (s. 288.1088).

<sup>2</sup> There is a difference between information and records that the Legislature has designated exempt from public disclosure and those the Legislature has deemed confidential and exempt. Information and records classified exempt from public disclosure are permitted to be disclosed under certain circumstances. See *City of Riviera Beach v. Barfield*, 642 So. 2d 1135 (Fla. 4th DCA 1994); *Williams v. City of Minneola*, 575 So. 2d 687 (Fla. 5th DCA 1991). If the Legislature designates certain information and records confidential and exempt from public disclosure, such information and records



- An employer's federal employer identification number, unemployment compensation account number, and Florida sales tax registration number;
- Trade secret information as defined in s. 812.081, F.S.;
- The percentage of non-state sales and the percentage of gross receipts from certain Department of Defense contracts;
- Anticipated wages for new jobs to be created;
- The average wage paid by the business for new jobs created, detailed proprietary business information or employee personal identifying information used to demonstrate wage and job creation requirements;
- Proprietary business information regarding capital investment in certain circumstances; and
- The amount of Florida taxes paid.

### Effect of Proposed Changes

The bill expands the public records exemption provided in s. 288.1067, F.S., to include information held by the Office of Tourism, Trade and Economic Development; Enterprise Florida, Inc.; or county or municipal governmental entities and their employees or agents pursuant to s. 288.1089, F.S., the "Innovation Incentive Program" created by HB 1283.

The bill provides for future review and repeal of the expanded exemption on October 2, 2011, provides a public necessity statement, and provides an effective date contingent on the passage of HB 1283 or similar legislation.

#### C. SECTION DIRECTORY:

Section 1. Amends s. 288.1067, F.S., to expand the existing public records exemption to include information held pursuant to the Innovation Incentive Program under s. 288.1089, F.S.

Section 2. Provides a public necessity statement.

Section 3. Provides a July 1, 2006 effective date contingent on the passage of HB 1283 or similar legislation.

## **II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT**

#### A. FISCAL IMPACT ON STATE GOVERNMENT:

##### 1. Revenues:

This bill does not create, modify, amend, or eliminate a state revenue source.

##### 2. Expenditures:

See Fiscal Comments.

#### B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

##### 1. Revenues:

This bill does not create, modify, amend, or eliminate a local revenue source.

##### 2. Expenditures:

See Fiscal Comments.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

The bill likely could create a fiscal impact on state and local governments, because staff responsible for complying with public records requests will require training relating to the newly created public records exemption. In addition, state and local governments could incur costs associated with redacting the confidential and exempt information prior to releasing a record.

**III. COMMENTS**

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

The bill does not require counties or municipalities to spend funds or to take an action requiring the expenditure of funds. The bill does not reduce the percentage of a state tax shared with counties or municipalities. The bill does not reduce the authority that municipalities have to raise revenue.

2. Other:

Vote Requirement

Article I, s. 24(c) of the Florida Constitution, requires a two-thirds vote of the members present and voting for passage of a newly created or expanded public records or public meetings exemption. The bill expands a current public records exemption. Thus, it requires a two-thirds vote for passage.

Public Necessity Statement

Article I, s. 24(c) of the Florida Constitution, requires a statement of public necessity (public necessity statement) for a newly created or expanded public records or public meetings exemption. The bill expands a current public records exemption. Thus, it includes a public necessity statement.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

Drafting Issues: Public Necessity Statement

Lines 94 through 96 of the bill reference the need to protect "private information, such as employee names and social security numbers" concerning employees of a business seeking participation in the Innovation Incentive Program. The exemption, however, does not protect such information from public disclosure. The sponsor may want to consider an amendment to remove those lines from the bill to conform the public necessity statement to the public records exemption.

**IV. AMENDMENTS/COMMITTEE SUBSTITUTE & COMBINED BILL CHANGES**

None.

HB 1285

2006

1                   A bill to be entitled  
2       An act relating to public records exemptions; amending s.  
3       288.1067, F.S.; expanding the public records exemption for  
4       incentive programs to include the Innovation Incentive  
5       Program under s. 288.1089, F.S.; providing for future  
6       review and repeal; providing a statement of public  
7       necessity; providing a contingent effective date.

8  
9   Be It Enacted by the Legislature of the State of Florida:

10  
11       Section 1. Subsections (1) and (4) of section 288.1067,  
12       Florida Statutes, are amended to read:

13       288.1067 Confidentiality of records.--

14       (1) The following information held by the Office of  
15       Tourism, Trade, and Economic Development, Enterprise Florida,  
16       Inc., or county or municipal governmental entities, and their  
17       employees or agents, pursuant to the incentive programs for  
18       qualified businesses as provided in s. 220.191, s. 288.1045, s.  
19       288.106, s. 288.108, ~~or~~ s. 288.1088, or s. 288.1089 is  
20       confidential and exempt from the provisions of s. 119.07(1) and  
21       s. 24(a), Art. I of the State Constitution, for a period not to  
22       exceed the duration of the relevant tax refund, tax credit, or  
23       incentive agreement:

24       (a) The business's federal employer identification number,  
25       unemployment compensation account number, and Florida sales tax  
26       registration number.

27       (b) Any trade secret information as defined in s. 812.081.  
28       Notwithstanding any provision of this section, trade secret

HB 1285

2006

29 information shall continue to be confidential and exempt after  
30 the duration of the tax refund, tax credit, or incentive  
31 agreement.

32 (c) The percentage of the business's sales occurring  
33 outside this state and, for businesses applying under s.  
34 288.1045, the percentage of the business's gross receipts  
35 derived from Department of Defense contracts during the 5 years  
36 immediately preceding the date the business's application is  
37 submitted.

38 (d) The anticipated wages for the project jobs that the  
39 business plans to create, as reported on the application for  
40 certification.

41 (e) The average wage actually paid by the business for  
42 those jobs created by the project and any detailed proprietary  
43 business information or an employee's personal identifying  
44 information, held as evidence of the achievement or  
45 nonachievement of the wage requirements of the tax refund, tax  
46 credit, or incentive agreement programs or of the job creation  
47 requirements of such programs.

48 (f) Any proprietary business information regarding capital  
49 investment in eligible building and equipment made by the  
50 qualified business project when held by the Office of Tourism,  
51 Trade, and Economic Development as evidence of the achievement  
52 or nonachievement of the investment requirements for the tax  
53 credit certification under s. 220.191, for the high-impact  
54 performance agreement under s. 288.108, ~~or~~ for the Quick Action  
55 Closing Fund agreement under s. 288.1088, or for the Innovation  
56 Incentive Program agreement under s. 288.1089.

HB 1285

2006

57 (g) The amount of:  
58 1. Taxes on sales, use, and other transactions paid  
59 pursuant to chapter 212;  
60 2. Corporate income taxes paid pursuant to chapter 220;  
61 3. Intangible personal property taxes paid pursuant to  
62 chapter 199;  
63 4. Emergency excise taxes paid pursuant to chapter 221;  
64 5. Insurance premium taxes paid pursuant to chapter 624;  
65 6. Excise taxes paid on documents pursuant to chapter 201;  
66 or  
67 7. Ad valorem taxes paid, as defined in s. 220.03(1),  
68  
69 which the qualified business reports on its application for  
70 certification or reports during the term of the tax refund  
71 agreement, and for which the qualified business claims a tax  
72 refund under s. 288.1045 or s. 288.106, and any such information  
73 held as evidence of the achievement or nonachievement of  
74 performance items contained in the tax refund agreement.

75 (4) This section is subject to the Open Government Sunset  
76 Review Act ~~of 1995~~ in accordance with s. 119.15 and shall stand  
77 repealed on October 2, 2011 ~~2007~~, unless reviewed and saved from  
78 repeal through reenactment by the Legislature.

79 Section 2. The Legislature finds that it is a public  
80 necessity to provide confidentiality for certain information  
81 concerning businesses that is obtained through the  
82 administration of the Innovation Incentive Program for qualified  
83 innovation businesses under s. 288.1089, Florida Statutes. The  
84 disclosure of information such as trade secrets, tax

85 identification numbers, analyses of gross receipts, the amount  
86 of taxes paid, the amount of capital investment, and the amount  
87 of employee wages paid, and the detailed documentation to  
88 substantiate such performance information, could injure a  
89 business in the marketplace by providing its competitors with  
90 detailed insights into the financial status and the strategic  
91 plans of the business, thereby diminishing the advantage that  
92 the business maintains over those that do not possess such  
93 information. Some of the documentation supplied to support a  
94 business's incentive claims could reveal private information,  
95 such as employee names and social security numbers, concerning  
96 that business's employees. Without this exemption, private  
97 sector businesses, whose records generally are not required to  
98 be open to the public, might refrain from participating in the  
99 economic development program and thus would not be able to use  
100 the incentives available under the program. If a business were  
101 unable to use the incentives, the business might choose to  
102 locate its employment and other investment activities outside  
103 the state, depriving the state and the public of the potential  
104 economic benefits associated with such business activities in  
105 this state. The harm to businesses in the marketplace and to the  
106 effective administration of the economic development program  
107 caused by the public disclosure of such information far  
108 outweighs the public benefits derived from its release. In  
109 addition, because the confidentiality provided by s. 288.1067,  
110 Florida Statutes, does not preclude the reporting of statistics  
111 in the aggregate concerning the program, as well as the names of  
112 businesses participating in the program and the amount of

HB 1285

2006

113 incentives awarded and claimed, the public has access to  
114 information important to an assessment of the performance of the  
115 program.

116       Section 3. This act shall take effect July 1, 2006, if  
117 House Bill 1283 or similar legislation is adopted in the same  
118 legislative session or an extension thereof and becomes a law.





## HOUSE OF REPRESENTATIVES STAFF ANALYSIS

**BILL #:** HB 1369

Public Records

**SPONSOR(S):** Evers

**TIED BILLS:**

**IDEN./SIM. BILLS:**

---

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1) Governmental Operations Committee		Williamson <i>haw</i>	Williamson <i>haw</i>
2) State Administration Council			
3) _____			
4) _____			
5) _____			

---

### SUMMARY ANALYSIS

Current law provides a public records exemption for sealed bids or proposals received by an agency pursuant to an invitation to bid or request for proposal. The sealed bid or proposal is exempt until the agency provides notice of a decision or intended decision or within 10 days after bid or proposal opening, whichever is earlier. Current law does not provide a public records exemption for an invitation to negotiate.

The bill expands the current public records exemption for sealed bids or proposals. It provides that a sealed bid or proposal remains exempt if an agency rejects all bids or proposals submitted in response to an invitation to bid (ITB) or a request for proposal (RFP) and concurrently provides notice of its intent to reopen the ITB or RFP. The bill provides for expiration of the exemption.

The bill also includes within the expanded exemption negotiations submitted in response to an invitation to negotiate.

The bill provides for future review and repeal of the exemption and provides a public necessity statement.

The bill does not grant rule-making authority to any administrative agency.

The bill could have a minimal fiscal impact on state and local governments.

**The bill requires a two-thirds vote of the members present and voting for passage.**

## FULL ANALYSIS

### I. SUBSTANTIVE ANALYSIS

#### A. HOUSE PRINCIPLES ANALYSIS:

Provide limited government – The bill decreases access to public records.

#### B. EFFECT OF PROPOSED CHANGES:

##### Public Records Law

Article I, s. 24(a), Florida Constitution, sets forth the state's public policy regarding access to government records. The section guarantees every person a right to inspect or copy any public record of the legislative, executive, and judicial branches of government. The Legislature, however, may provide by general law for the exemption of records from the requirements of Article I, s. 24(a), Florida Constitution. The general law must state with specificity the public necessity justifying the exemption (public necessity statement) and must be no broader than necessary to accomplish its purpose. Public policy regarding access to government records also is addressed in the Florida Statutes.

Chapter 119, F.S., more completely addresses the issue of public records. Section 119.07(1), F.S., also guarantees every person a right to inspect, examine, and copy any state, county, or municipal record.

##### Open Government Sunset Review Act

Section 119.15, F.S., the "Open Government Sunset Review Act," sets forth a legislative review process that requires newly created or expanded exemptions to include an automatic repeal of the exemption on October 2nd of the fifth year after enactment or substantial amendment, unless the Legislature reenacts the exemption. It provides that a public records or public meetings exemption may be created or maintained only if it serves an identifiable public purpose, and may be no broader than is necessary to meet one of the following public purposes:

- Allowing the state or its political subdivisions to effectively and efficiently administer a governmental program, which administration would be significantly impaired without the exemption;
- Protecting sensitive personal information that, if released, would be defamatory or would jeopardize an individual's safety. However, only the identity of an individual may be exempted under this provision; or
- Protecting trade or business secrets.

##### Agency Procurement

Agency procurements of commodities or contractual services that exceed \$25,000 are governed by statute and rule that requires utilization of one of the following three types of competitive solicitations, unless otherwise authorized by law:<sup>1</sup>

- Invitation to bid (ITB): An agency must use an ITB when it is capable of specifically defining the scope of work for which a contractual service is required or capable of establishing the precise specifications defining the commodities sought.<sup>2</sup> The contract must be awarded to the responsible<sup>3</sup> and responsive vendor<sup>4</sup> that submits the lowest responsive bid.<sup>5</sup>

<sup>1</sup> See, *infra*, at pp. (discussing general exceptions and emergency, sole source, and state term contract purchases).

<sup>2</sup> Section 287.012(16), F.S.

<sup>3</sup> The term "responsible vendor" means, "... a vendor who has the capability in all respects to fully perform the contract requirements and the integrity and reliability that will assure good faith performance." Section 287.012(24), F.S.

<sup>4</sup> "Responsive vendor" means, "... a vendor that has submitted a bid, proposal, or reply that conforms in all material respects to the solicitation." Section 287.012(26), F.S.

- Request for proposals (RFP): An agency may use a RFP when it determines in writing that it is not practicable for it to define specifically the scope of work for which the commodity or contractual service is required and when it is requesting that the vendor propose commodities or contractual services to meet the RFP's specifications.<sup>6</sup> Unlike the ITB process, the contract need not be awarded to the lowest priced vendor; rather, the award must be given to the responsible and responsive vendor whose proposal is determined in writing to be the most advantageous to the state after consideration of the price and other criteria set forth in the RFP.<sup>7</sup>
- Invitation to negotiate (ITN): An agency may use an ITN when it determines in writing that negotiation is necessary for the state to achieve the best value.<sup>8</sup> After ranking the replies received in response to the ITN, the agency must select, based on the rankings, one or vendors with which to commence negotiations. The contract must be awarded to the responsible and responsive vendor that the agency determines will provide the best value to the state.<sup>9</sup>

### Public Records Exemption for Bids and Proposals

Current law provides a public records exemption for sealed bids or proposals received by an agency pursuant to an ITB or RFP. The sealed bid or proposal is exempt until the agency provides notice of a decision or intended decision or within 10 days after bid or proposal opening, whichever is earlier.<sup>10</sup> Current law does not provide a public records exemption for an ITN.

### Effect of Bill

The bill expands the current public records exemption for sealed bids or proposals. It provides that a sealed bid or proposal remains exempt if an agency rejects all bids or proposals submitted in response to an ITB or RFP and concurrently provides notice of its intent to reopen the ITB or RFP. The exemption expires once:

- Notice of a decision or intended decision is provided concerning the reopened ITB or RFP, or
- The agency withdraws the reopened ITB or RFP.

The bill also includes within the expanded exemption negotiations submitted in response to an ITN.

The bill provides for future review and repeal of the exemption on October 2, 2011. It also provides a public necessity statement.

## **C. SECTION DIRECTORY:**

Section 1 amends s. 119.071, F.S., to expand the current exemption for sealed bids or proposals.

Section 2 provides a public necessity statement.

Section 3 provides an effective date of upon becoming a law.

## **II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT**

### **A. FISCAL IMPACT ON STATE GOVERNMENT:**

<sup>5</sup> Section 287.057(1), F.S.; "Responsive bid," "responsive proposal," or "responsive reply" means, "... a bid, proposal, or reply submitted by a responsive and responsible vendor that conforms in all material respects to the solicitation." Section 287.012(25), F.S.

<sup>6</sup> Sections 287.017(22) and 287.057(2), F.S.

<sup>7</sup> Section 287.057(2), F.S.

<sup>8</sup> Sections 287.012(17) and 287.057(3), F.S.; "Best value" means, "... the highest overall value to the state based on objective factors that include, but are not limited to, price, quality, design, and workmanship." Section 287.012(4), F.S.

<sup>9</sup> Section 287.057(3), F.S.

<sup>10</sup> Section 119.071(1)(b), F.S.

1. Revenues:  
See FISCAL COMMENTS.
2. Expenditures:  
See FISCAL COMMENTS.

**B. FISCAL IMPACT ON LOCAL GOVERNMENTS:**

1. Revenues:  
See FISCAL COMMENTS.
2. Expenditures:  
See FISCAL COMMENTS.

**C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:**

None.

**D. FISCAL COMMENTS:**

The exemption could improve the ability of state and local governments to obtain the best pricing, which could increase state and local government revenues. The bill likely could create a fiscal impact on state and local governments, because staff responsible for complying with public records requests will require training related to the newly created public records exemption.

### **III. COMMENTS**

**A. CONSTITUTIONAL ISSUES:**

**1. Applicability of Municipality/County Mandates Provision:**

The bill does not require counties or municipalities to spend funds or to take an action requiring the expenditure of funds. The bill does not reduce the percentage of a state tax shared with counties or municipalities. The bill does not reduce the authority that municipalities have to raise revenue.

**2. Other:**

Vote Requirement

Article I, s. 24(c) of the Florida Constitution, requires a two-thirds vote of the members present and voting for passage of a newly created public records or public meetings exemption. The bill creates a public records exemption. Thus, it requires a two-thirds vote for passage.

Public Necessity Statement

Article I, s. 24(c) of the Florida Constitution, requires a statement of public necessity (public necessity statement) for a newly created public records or public meetings exemption. The bill creates a public records exemption. Thus, it includes a public necessity statement.

**B. RULE-MAKING AUTHORITY:**

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

Invitations to Negotiate

The bill only protects a “negotiation” submitted in response to an ITN if the agency rejects all negotiations and concurrently provides notice of its intent to reopen the ITN. The original submission, however, is not protected from public disclosure. As such, the exemption appears irrelevant, as the information is public until the agency rejects all negotiations. The sponsor may want to consider including within the original exemption negotiations in response to an ITN.

**IV. AMENDMENTS/COMMITTEE SUBSTITUTE & COMBINED BILL CHANGES**

Not applicable.

HB 1369

2006

A bill to be entitled

An act relating to public records; amending s. 119.071, F.S.; creating an exemption from public-records requirements for information contained in materials relating to rejected bids, negotiations, and proposals received by a state agency; requiring that the information remain confidential until the agency provides notice of a decision or withdraws its invitation to bid, invitation to negotiate, or request for proposals; providing for future legislative review and repeal of such exemption under the Open Government Sunset Review Act; providing a statement of public necessity; providing an effective date.

Be It Enacted by the Legislature of the State of Florida:

Section 1. Paragraph (b) of subsection (1) of section 119.071, Florida Statutes, is amended to read:

119.071 General exemptions from inspection or copying of public records.--

(1) AGENCY ADMINISTRATION.--

(b)1. Sealed bids or proposals received by an agency pursuant to invitations to bid or requests for proposals are exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution until such time as the agency provides notice of a decision or intended decision pursuant to s. 120.57(3)(a) or within 10 days after bid or proposal opening, whichever is earlier.

2. Notwithstanding subparagraph 1., if an agency rejects

HB 1369

2006

29 all bids, negotiations, or proposals submitted in response to an  
30 invitation to bid, invitation to negotiate, or request for  
31 proposals and the agency concurrently provides notice of its  
32 intent to reopen the invitation to bid, invitation to negotiate,  
33 or request for proposals, the rejected bids, negotiations, or  
34 proposals remain exempt from s. 119.07(1) and s. 24(a), Art. I  
35 of the State Constitution until notice of a decision or intended  
36 decision is provided concerning the reopened invitation to bid,  
37 invitation to negotiate, or request for proposals or until the  
38 agency withdraws the reopened invitation to bid, invitation to  
39 negotiate, or request for proposals.

40 3. Subparagraph 2. is subject to the Open Government  
41 Sunset Review Act in accordance with s. 119.15, and shall stand  
42 repealed on October 2, 2011, unless reviewed and saved from  
43 repeal through reenactment by the Legislature.

44 Section 2. The Legislature finds that it is a public  
45 necessity that information contained in materials related to a  
46 state agency's rejected bids, negotiations, or proposals be made  
47 confidential and exempt from disclosure under s. 119.07(1),  
48 Florida Statutes, and s. 24(a), Art. I of the State Constitution  
49 except as otherwise provided by law. The Legislature further  
50 finds that the public policy provided by this exemption will be  
51 best served by maintaining the confidentiality of the  
52 information contained in materials related to rejected bids,  
53 negotiations, or proposals by an agency.

54 Section 3. This act shall take effect upon becoming a law.





**BILL #:** HB 1421 Department of Public Safety  
**SPONSOR(S):** Needelman  
**TIED BILLS:** **IDEN./SIM. BILLS:** SB 2684

## FULL ANALYSIS

### I. SUBSTANTIVE ANALYSIS

#### A. HOUSE PRINCIPLES ANALYSIS:

**Provide limited government** – The bill creates a new department within the executive branch.

**Maintain public security** – The bill moves certain disparate law enforcement entities into a single department.

#### B. EFFECT OF PROPOSED CHANGES:

##### **Current Situation**

##### Florida Highway Patrol

The Department of Highway Safety and Motor Vehicles (HSMV) is created by s. 20.24, F.S. The Florida Highway Patrol (FHP) is a division of HSMV.<sup>1</sup> The other divisions that constitute HSMV are the Division of Drivers' Licenses and the Division of Motor Vehicles.

Chapter 321, F.S., details the duties of the Florida Highway Patrol. Specifically, the FHP must:

- Patrol the state highways and regulate, control, and direct the movement of traffic thereon;
- Maintain the public peace by preventing violence on highways;
- Apprehend fugitives from justice;
- Enforce all laws regulating and governing traffic, travel, and public safety upon the public highways and provide for the protection of the public highways and public property thereon;
- Make arrests without warrant for the violation of any state law committed in their presence;
- Regulate and direct traffic concentrations and congestions;
- Enforce laws governing the operation, licensing, and taxing and limiting the size, weight, width, length, and speed of vehicles and licensing and controlling the operations of drivers and operators of vehicles;
- Cooperate with officials designated by law to collect all state fees and revenues levied as an incident to the use or right to use the highways for any purpose;
- Require the drivers of vehicles to stop and exhibit their driver's licenses, registration cards, or documents required by law to be carried by such vehicles; to investigate traffic accidents, secure testimony of witnesses and of persons involved, and make report thereof with copy, when requested in writing, to any person in interest or his or her attorney; and
- Investigate reported thefts of vehicles and to seize contraband or stolen property on or being transported on the highways.<sup>2</sup>

##### Fish and Wildlife Conservation Commission

The State Constitution mandates the existence of the Fish and Wildlife Conservation Commission (FWCC).<sup>3</sup> Section 20.331, F.S., implements the FWCC, and creates five divisions within it, as follows:

- Freshwater Fisheries Management;
- Marine Fisheries Management;
- Hunting and Game Management;
- Habitat and Species Conservation; and
- Law Enforcement.

---

<sup>1</sup> Section 20.24(2)(a), F.S.

<sup>2</sup> Section 321.05(1), F.S.

<sup>3</sup> Section 9, Art. IV, Constitution of the State of Florida.

The duties of the Division of Law Enforcement are to ensure enforcement of laws and rules regarding marine life and waterways.<sup>4</sup> As sworn law enforcement officers, the division's officers also enforce boating laws, provide public safety services on land and water, provide search-and-rescue operations, assist in the enforcement of all general laws, and coordinate with local, state, and federal entities on law enforcement issues.<sup>5</sup>

Section 20.331(4), F.S., creates the Boating and Waterways section (BWS) within the FWCC Division of Law Enforcement. The BWS section of the Division of Law Enforcement is empowered to manage and promote the use of state waterways for safe and enjoyable boating, including oversight and coordination of waterway markers, providing boating education, improving boating access, coordinating removal of derelict vessels, implementing economic development programs to promote boating, and coordinating the submission of state comments on marine events.<sup>6</sup>

### Type One Transfer

Section 20.06, F.S., provides for the reorganization of executive branch agencies, or portions thereof. A type one transfer describes the process of moving an intact agency<sup>7</sup> or department so that the agency or department becomes a unit of another agency or department.<sup>8</sup> In a type one transfer, the moving agency's powers and duties remain intact, administrative rules remain valid, and all property and personnel transfer to the receiving agency. Segregated funds are transferred in a manner that retains the relationship between program and revenue source.<sup>9</sup>

### Limitation on Executive Branch Departments

Section 20.02(2), F.S., declares that the executive branch may not consist of more than 25 departments, exclusive of those specifically provided for or authorized in the State Constitution. There are currently 22 distinct departments created in chapter 20, F.S., including those authorized by the Constitution (the Fish and Wildlife Conservation Commission, the Department of Veterans' Affairs, and the Department of Elderly Affairs).

### **Proposed Changes**

The bill creates a new Department of Public Safety (DPS). The DPS is made up of two divisions, transferred by type one transfer from other agencies. These two divisions are the Florida Highway Patrol (transferred from the HSMV) and the Florida Marine Patrol (the BWS, transferred from the division of Law Enforcement at FWCC).

A majority of the bill makes conforming changes to various statutes involving the FHP. The bill also creates new sections of law regarding the Florida Marine Patrol (FMP). It grants the division powers and duties similar or identical to current powers and duties of the FHP.<sup>10</sup> These statutes include provisions regarding employee qualifications, supplies and equipment, a color scheme, impersonation of officers or official vehicles, and the duties of law enforcement officers.<sup>11</sup>

---

<sup>4</sup> Section 20.331(7)(e), F.S.

<sup>5</sup> *Id.*

<sup>6</sup> Section 20.331(7)(e)1., F.S.

<sup>7</sup> For purposes of Chapter 20, F.S., the term "agency" includes divisions, sections, or other units or entities of government. [s. 20.03, F.S.]

<sup>8</sup> Section 20.06(1), F.S.

<sup>9</sup> *Id.*

<sup>10</sup> The new statutes are placed in a new Part II of Chapter 327, F.S. Chapter 327, F.S., currently covers "Vessel Safety," and this title is retained for Part I of the revised chapter. The legislation directs the Division of Statutory Revision to title Part II, "Florida Marine Patrol."

<sup>11</sup> See fn. 10. These provisions are placed in new sections 327.901 – 327.9065, F.S.

With regard to the removal of the current BWS, the bill states that the number of sworn law enforcement FTE positions transferred to the new DPS “shall be one-half the number of such positions in the Fish and Wildlife Conservation Commission.” The remaining half of the FTE law enforcement positions remain with the FWCC’s Division of Law Enforcement.

The bill also addresses the number of management positions in each division. The bill amends s. 321.04, F.S., to assert that within the FHP, “management positions shall not exceed 6 percent [6%] of the total workforce.”<sup>12</sup> It also creates s. 327.904, F.S., which asserts the same six percent management cap for the FMP.

The bill authorizes the DPS to employ boating accident investigation officers who “must complete any applicable standards adopted by the patrol including, but not limited to: cognitive testing, drug testing, polygraph testing, psychological testing, and an extensive background check, including a credit check.”

#### C. SECTION DIRECTORY:

Section 1 creates s. 20.60, F.S., creating the Department of Public Safety, containing the Division of the Florida Highway Patrol and the Division of the Florida Marine Patrol.

Section 2 transfers the Florida Highway Patrol to the Department of Public Safety by Type One transfer.

Section 3 transfers the Boating and Waterways Section of the Fish and Wildlife Conservation Commission’s Law Enforcement Division to the Department of Public Safety by Type One transfer.

Sections 4 – 20 make conforming changes.

Section 21 amends s. 321.04, F.S., to make conforming changes, to assert that management positions within the division will not exceed six percent of the total workforce, and to provide that the Governor shall select the patrol officer assigned to the Executive Office of the Governor.

Sections 22 – 25 make conforming changes.

Section 26 amends s. 321.25, F.S., to make conforming changes and to permit the Florida Marine Patrol to establish training criteria for its candidates.

Section 27 directs the Division of Statutory Revision to title the existing provisions of chapter 327, F.S., as Part I – “Vessel Safety,” and to create a new Part II – “Florida Marine Patrol.”

Section 28 creates s. 327.901, F.S., providing definitions.

Section 29 creates s. 327.902, F.S., granting powers and duties to the Department of Public Safety regarding personnel matters, supplies and equipment, and authority to prescribe a color scheme.

Section 30 creates s. 327.903, F.S., prohibiting impersonation of a Florida Marine Patrol employee or vehicle.

Section 31 creates s. 327.904, F.S., providing provisions regarding personnel and to assert that management positions within the division will not exceed six percent of the total workforce.

Section 32 creates s. 327.905, F.S., providing provisions detailing the duties of Florida Marine Patrol officers.

---

<sup>12</sup> Along with this change and some conforming changes, Section 21 also clarifies that the Governor, rather than the department, shall select the FHP officer assigned to the Executive Office of the Governor.

Section 33 creates s. 327.9065, F.S., allowing the employment of boating accident investigation officers.

Sections 34 – 42 make conforming changes.

Section 43 provides an effective date of July 1, 2006.

## **II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT**

### **A. FISCAL IMPACT ON STATE GOVERNMENT:**

#### **1. Revenues:**

The bill does not explicitly create, modify, amend, or eliminate a state revenue source, but see D. FISCAL COMMENTS, below.

#### **2. Expenditures:**

The bill does not explicitly create, modify, amend, or eliminate a state expenditure, but see D. FISCAL COMMENTS, below.

### **B. FISCAL IMPACT ON LOCAL GOVERNMENTS:**

#### **1. Revenues:**

The bill does not create, modify, amend, or eliminate a local revenue source.

#### **2. Expenditures:**

The bill does not create, modify, amend, or eliminate a local expenditure.

### **C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:**

None.

### **D. FISCAL COMMENTS:**

The HSMV has stated that the FHP currently has 2,360 positions and an appropriation of \$202,181,558.<sup>13</sup> Of these amounts, \$131,398,580 is funded from the General Revenue Fund and the remaining amount is funded from trust funds.<sup>14</sup> Additionally 85 positions funded at approximately \$6.0 million provide administrative and data processing support to the Florida Highway Patrol.<sup>15</sup> The HSMV opines that if the legislation becomes law, approximately \$50 million of the amount funded from trust funds will need to be supplemented from the General Revenue Fund or other sources, “as this portion is currently funded from driver license and motor vehicle revenue sources.”<sup>16</sup>

Implementation of this legislation also will require programming modifications to the Driver License Information System. HSMV states that the cost will be absorbed within existing resources.<sup>17</sup>

---

<sup>13</sup> 2006 DHSMV Bill Analysis, HB 1421, Department of Highway Safety and Motor Vehicles, March 6, 2006.

<sup>14</sup> *Id.*

<sup>15</sup> *Id.*

<sup>16</sup> *Id.*

<sup>17</sup> *Id.*

### III. COMMENTS

#### A. CONSTITUTIONAL ISSUES:

##### 1. Applicability of Municipality/County Mandates Provision:

This bill does not appear to require counties or municipalities to take an action requiring the expenditure of funds, reduce the authority that counties or municipalities have to raise revenue in the aggregate, nor reduce the percentage of state tax shared with counties or municipalities.

##### 2. Other:

None.

#### B. RULE-MAKING AUTHORITY:

To the extent that the bill contains provisions making conforming changes, there are some grants of rulemaking implicated. These provisions are merely current law, with the current grants of authority transferred to the new DPS. Pursuant to the type one transfer provisions, current rules will remain in effect.<sup>18</sup> However, there are two new grants of rulemaking authority:

- The bill grants DPS rulemaking authority to adopt Florida Marine Patrol officer training, education, suspension, and other personnel rules. The provision is nearly identical to the current s. 321.02, F.S., granting DHSMV authority to promulgate the same rules for the current Florida Highway Patrol.
- The bill allows the DPS to employ boating accident investigation officers and lists certain applicable standards such officers must meet. These standards require rulemaking, under the general grant given in the new statutes.

#### C. DRAFTING ISSUES OR OTHER COMMENTS:

##### Drafting Issues – Rulemaking

The intent of the grant of rulemaking authority contained in s. 327.905, F.S., appears to cover Part II in its entirety. If this is the case, the Joint Administrative Procedures Committee recommends moving the grant into a new section, or into s. 327.902, F.S., to clarify its application to the entire part.<sup>19</sup>

##### Drafting Issues – Definition

The HSMV has expressed a concern that the bill does not specifically define what constitutes a “management position” for purposes of interpreting the six percent management cap contained in Sections 21 and 31 of the bill.<sup>20</sup>

### IV. AMENDMENTS/COMMITTEE SUBSTITUTE & COMBINED BILL CHANGES

Not applicable.

<sup>18</sup> Section 20.06(1), F.S.

<sup>19</sup> E-mail from Joint Administrative Procedures Committee, April 13, 2006.

<sup>20</sup> 2006 DHSMV Bill Analysis, HB 1421, Department of Highway Safety and Motor Vehicles, March 6, 2006.

1                   A bill to be entitled  
2       An act relating to the Department of Public Safety;  
3       creating s. 20.60, F.S.; creating the Department of Public  
4       Safety; transferring the Florida Highway Patrol from the  
5       Department of Highway Safety and Motor Vehicles to the  
6       Department of Public Safety; transferring the Boating and  
7       Waterways Section of the Division of Law Enforcement of  
8       the Fish and Wildlife Conservation Commission to the  
9       Department of Public Safety; transferring certain law  
10      enforcement officers within the Fish and Wildlife  
11      Conservation Commission to the Department of Public  
12      Safety; providing a limit on the number of such sworn law  
13      enforcement positions transferred; amending ss. 20.24,  
14      20.331, 23.1231, 120.80, 282.1095, 316.003, 316.065,  
15      316.066, 316.068, 316.1905, 316.1906, 316.611, 316.614,  
16      and 316.640, F.S.; conforming provisions to the creation  
17      of the Department of Public Safety and the transfers of  
18      powers, duties, and personnel to the department; creating  
19      s. 321.011, F.S.; providing definitions; amending ss.  
20      321.02, 321.03, 321.04, 321.05, 321.051, 321.065, 321.23,  
21      and 321.25, F.S.; conforming provisions to the creation of  
22      the Department of Public Safety and the transfers of  
23      powers, duties, and personnel to the department; providing  
24      a directive to the Division of Statutory Revision;  
25      creating ss. 327.901, 327.902, 327.903, 327.904, 327.905,  
26      and 327.9065, F.S.; providing definitions; providing for  
27      duties, powers, and organization of the Florida Marine  
28      Patrol; providing for uniforms, emblems, and distinctive

HB 1421

2006

colors for the patrol; prohibiting imitations; providing penalties; providing for rulemaking; providing for boating accident investigators; amending ss. 337.406, 338.239, 339.281, 370.0603, 401.245, 403.413, 790.25, 843.08, and 870.04, F.S.; conforming provisions to the creation of the Department of Public Safety and the transfers of powers, duties, and personnel to the department; providing an effective date.

Be It Enacted by the Legislature of the State of Florida:

Section 1. Section 20.60, Florida Statutes, is created to read:

20.60 Department of Public Safety.--

(1) There is created a Department of Public Safety.

(2) The head of the Department of Public Safety is the Governor and Cabinet.

(3) The following divisions of the Department of Public Safety are established:

(a) Division of the Florida Highway Patrol.

(b) Division of the Florida Marine Patrol. The division shall have all powers, duties, responsibilities, and functions as are necessary to manage and promote the use of state waterways for safe and enjoyable boating. Duties and responsibilities of the division include enforcement of all laws relating to boating, oversight, and coordination of waterway markers on state waters; providing boating education and boating safety programs; improving boating access; coordinating the



HB 1421

2006

57 removal of derelict vessels from state waters; implementing  
58 economic development initiatives to promote boating in the  
59 state; and coordinating the submission of state comments on  
60 marine events.

61 (4) The department's officers also shall, when necessary,  
62 assist in the enforcement of all general laws, provide search-  
63 and-rescue and disaster response services, and coordinate with  
64 local, state, and federal entities on law enforcement issues.

65 Section 2. All statutory powers, duties, and functions of  
66 the Florida Highway Patrol within the Department of Highway  
67 Safety and Motor Vehicles are transferred from the Department of  
68 Highway Safety and Motor Vehicles to the Division of the Florida  
69 Highway Patrol within the Department of Public Safety by a type  
70 one transfer, as defined in s. 20.06, Florida Statutes.

71 Section 3. All statutory powers, duties, and functions of  
72 the Boating and Waterways Section within the Fish and Wildlife  
73 Conservation Commission are transferred from the Fish and  
74 Wildlife Conservation Commission to the Division of the Florida  
75 Marine Patrol within the Department of Public Safety by a type  
76 one transfer, as defined in s. 20.06, Florida Statutes. This  
77 transfer shall include the transfer of all law enforcement  
78 officers within the Fish and Wildlife Conservation Commission  
79 whose primary duties are to enforce laws relating to boating.  
80 The number of sworn law enforcement FTE positions transferred  
81 under this section shall be one-half the number of such  
82 positions in the Fish and Wildlife Conservation Commission.

83 Section 4. Subsection (2) of section 20.24, Florida  
84 Statutes, is amended to read:

HB 1421

2006

20.24 Department of Highway Safety and Motor Vehicles.--There is created a Department of Highway Safety and Motor Vehicles.

(2) The following divisions, and bureaus within the divisions, of the Department of Highway Safety and Motor Vehicles are established:

~~(a) Division of the Florida Highway Patrol.~~

(a) ~~(b)~~ Division of Driver Licenses.

(b) ~~(c)~~ Division of Motor Vehicles.

1. Bureau of Motor Vehicle Inspection.

Section 5. Paragraph (a) of subsection (4) and paragraph (e) of subsection (7) of section 20.331, Florida Statutes, are amended to read:

20.331 Fish and Wildlife Conservation Commission.--

(4) PROGRAM AND RESEARCH SERVICES.--Within the Fish and Wildlife Conservation Commission, the principal unit for program services is a "division" headed by a "director." The principal subunit of the division is a "section" headed by a "leader." The principal subunit of the section is a "subsection" headed by an "administrator."

(a) The following divisions and section are created within the commission:

1. Division of Freshwater Fisheries Management.

2. Division of Habitat and Species Conservation.

3. Division of Hunting and Game Management.

4. Division of Law Enforcement. ~~There is created within the division the Boating and Waterways Section with duties and responsibilities as provided in paragraph (7)(e).~~

HB 1421

2006

5. Division of Marine Fisheries Management.

(7) ASSIGNMENT OF DUTIES AND RESPONSIBILITIES.--The commission, and the Legislature as provided in s. 9, Art. IV of the State Constitution, shall assign to the:

(e) Division of Law Enforcement such powers, duties, responsibilities, and functions as are necessary to ensure enforcement of laws and rules governing the management, protection, conservation, improvement, and expansion of wild animal life, freshwater aquatic life, and marine life resources. In performance of their duties as sworn law enforcement officers for the State of Florida, the division's officers also shall, enforce all laws relating to boating, provide public safety services for citizens on lands and waters of the state particularly in remote areas, provide search and rescue and disaster response services when necessary, assist in the enforcement of all general laws, provide search-and-rescue and disaster response services, and coordinate with local, state, and federal entities on law enforcement issues.

~~1. The Boating and Waterways Section such powers, duties, responsibilities, and functions as are necessary to manage and promote the use of state waterways for safe and enjoyable boating. Duties and responsibilities of the section include oversight and coordination of waterway markers on state waters, providing boating education and boating safety programs, improving boating access, coordinating the removal of derelict vessels from state waters, implementing economic development initiatives to promote boating in the state, and coordinating the submission of state comments on marine events.~~

HB 1421

2006

Section 6. Paragraph (e) of subsection (2) of section 23.1231, Florida Statutes, is amended to read:

23.1231 Florida Mutual Aid Plan; powers and duties.--

(2) The executive director of the Department of Law Enforcement acting under the Governor as the state's chief law enforcement officer is the director of the Florida Mutual Aid Plan. The director of the Florida Mutual Aid Plan shall:

(e) Act as the liaison with the Division of the Florida Highway Patrol of the Department of Public Highway Safety and ~~Motor Vehicles~~ in order to coordinate and integrate plans for traffic control and the participation of the department in the law enforcement operation;

Section 7. Subsection (8) of section 120.80, Florida Statutes, is amended, and paragraph (b) of that subsection is renumbered as subsection (18) of that section, to read:

120.80 Exceptions and special requirements; agencies.--

(8) DEPARTMENT OF HIGHWAY SAFETY AND MOTOR VEHICLES.--

~~(a) Drivers' licenses.--~~

(a)1- Notwithstanding s. 120.57(1)(a), hearings regarding drivers' licensing pursuant to chapter 322 need not be conducted by an administrative law judge assigned by the division.

(b)2- Notwithstanding s. 120.60(5), cancellation, suspension, or revocation of a driver's license shall be by personal delivery to the licensee or by first-class mail as provided in s. 322.251.

(18)(b) DEPARTMENT OF PUBLIC SAFETY Wrecker operators.--Notwithstanding s. 120.57(1)(a), hearings held by the Division of the Florida Highway Patrol of the Department of

HB 1421

2006

169 Public Highway Safety and Motor Vehicles to deny, suspend, or  
 170 remove a wrecker operator from participating in the wrecker  
 171 rotation system established by s. 321.051 need not be conducted  
 172 by an administrative law judge assigned by the division. These  
 173 hearings shall be held by a hearing officer appointed by the  
 174 director of the Division of the Florida Highway Patrol.

175       Section 8. Paragraph (a) of subsection (2) of section  
 176 282.1095, Florida Statutes, is amended to read:

177       282.1095 State agency law enforcement radio system and  
 178 interoperability network.--

179       (2) (a) The Joint Task Force on State Agency Law  
 180 Enforcement Communications shall consist of nine ~~eight~~ members,  
 181 as follows:

182       1. A representative of the Division of Alcoholic Beverages  
 183 and Tobacco of the Department of Business and Professional  
 184 Regulation who shall be appointed by the secretary of the  
 185 department.

186       2. A representative of the Division of the Florida Highway  
 187 Patrol and a representative of the Division of the Florida  
 188 Marine Patrol of the Department of Public Highway Safety and  
 189 ~~Motor Vehicles~~ who each shall be appointed by the executive  
 190 director of the department.

191       3. A representative of the Department of Law Enforcement  
 192 who shall be appointed by the executive director of the  
 193 department.

194       4. A representative of the Fish and Wildlife Conservation  
 195 Commission who shall be appointed by the executive director of  
 196 the commission.

HB 1421

2006

197           5. A representative of the Division of Law Enforcement of  
198 the Department of Environmental Protection who shall be  
199 appointed by the secretary of the department.

200           6. A representative of the Department of Corrections who  
201 shall be appointed by the secretary of the department.

202           7. A representative of the Division of State Fire Marshal  
203 of the Department of Financial Services who shall be appointed  
204 by the State Fire Marshal.

205           8. A representative of the Department of Transportation  
206 who shall be appointed by the secretary of the department.

207           Section 9. Subsection (9) of section 316.003, Florida  
208 Statutes, is amended to read:

209           316.003 Definitions.--The following words and phrases,  
210 when used in this chapter, shall have the meanings respectively  
211 ascribed to them in this section, except where the context  
212 otherwise requires:

213           (9) DIRECTOR.--The Director of the Division of the Florida  
214 Highway Patrol of the Department of Public Highway Safety and  
215 ~~Motor Vehicles~~.

216           Section 10. Subsection (2) of section 316.065, Florida  
217 Statutes, is amended to read:

218           316.065 Crashes; reports; penalties.--

219           (2) Every coroner or other official performing like  
220 functions, upon learning of the death of a person in his or her  
221 jurisdiction as the result of a traffic crash, shall immediately  
222 notify the nearest office or station of the Department of Public  
223 Safety.

HB 1421

2006

224           Section 11. Subsections (1) and (2) and paragraph (a) of  
225 subsection (3) of section 316.066, Florida Statutes, are amended  
226 to read:

227           316.066 Written reports of crashes.--

228           (1) The driver of a vehicle which is in any manner  
229 involved in a crash resulting in bodily injury to or death of  
230 any person or damage to any vehicle or other property in an  
231 apparent amount of at least \$500 shall, within 10 days after the  
232 crash, forward a written report of such crash to the Department  
233 of Public Safety or traffic records center. However, when the  
234 investigating officer has made a written report of the crash  
235 pursuant to paragraph (3)(a), no written report need be  
236 forwarded to the Department of Public Safety or traffic records  
237 center by the driver.

238           (2) The receiving entity may require any driver of a  
239 vehicle involved in a crash of which a written report must be  
240 made as provided in this section to file supplemental written  
241 reports whenever the original report is insufficient in the  
242 opinion of the Department of Public Safety and may require  
243 witnesses of crashes to render reports to the Department of  
244 Public Safety.

245           (3)(a) Every law enforcement officer who in the regular  
246 course of duty investigates a motor vehicle crash:

247           1. Which crash resulted in death or personal injury shall,  
248 within 10 days after completing the investigation, forward a  
249 written report of the crash to the Department of Public Safety  
250 or traffic records center.

HB 1421

2006

251           2. Which crash involved a violation of s. 316.061(1) or s.  
252   316.193 shall, within 10 days after completing the  
253   investigation, forward a written report of the crash to the  
254   Department of Public Safety or traffic records center.

255           3. In which crash a vehicle was rendered inoperative to a  
256   degree which required a wrecker to remove it from traffic may,  
257   within 10 days after completing the investigation, forward a  
258   written report of the crash to the Department of Public Safety  
259   or traffic records center if such action is appropriate, in the  
260   officer's discretion.

261  
262   However, in every case in which a crash report is required by  
263   this section and a written report to a law enforcement officer  
264   is not prepared, the law enforcement officer shall provide each  
265   party involved in the crash a short-form report, prescribed by  
266   the state, to be completed by the party. The short-form report  
267   must include, but is not limited to: the date, time, and  
268   location of the crash; a description of the vehicles involved;  
269   the names and addresses of the parties involved; the names and  
270   addresses of witnesses; the name, badge number, and law  
271   enforcement agency of the officer investigating the crash; and  
272   the names of the insurance companies for the respective parties  
273   involved in the crash. Each party to the crash shall provide the  
274   law enforcement officer with proof of insurance to be included  
275   in the crash report. If a law enforcement officer submits a  
276   report on the accident, proof of insurance must be provided to  
277   the officer by each party involved in the crash. Any party who  
278   fails to provide the required information commits ~~is guilty of~~



HB 1421

2006

an infraction for a nonmoving violation, punishable as provided in chapter 318 unless the officer determines that due to injuries or other special circumstances such insurance information cannot be provided immediately. If the person provides the law enforcement agency, within 24 hours after the crash, proof of insurance that was valid at the time of the crash, the law enforcement agency may void the citation.

Section 12. Section 316.068, Florida Statutes, is amended to read:

316.068 Crash report forms.--

(1) The Department of Public Safety shall prepare and, upon request, supply to police departments, sheriffs, and other appropriate agencies or individuals forms for crash reports as required in this chapter, suitable with respect to the persons required to make such reports and the purposes to be served. The form must call for sufficiently detailed information to disclose, with reference to a vehicle crash, the cause and conditions then existing and the persons and vehicles involved. Every crash report form must call for the policy numbers of liability insurance and the names of carriers covering any vehicle involved in a crash required to be reported by this chapter.

(2) Every crash report required to be made in writing must be made on the appropriate form approved by the Department of Public Safety and must contain all the information required therein unless not available. Notwithstanding any other provisions of this section, a crash report produced electronically by a law enforcement officer must, at a minimum,

HB 1421

2006

307 contain the same information as is called for on those forms  
308 approved by the Department of Public Safety.

309       Section 13. Subsection (1) and paragraph (a) of subsection  
310 (3) of section 316.1905, Florida Statutes, are amended to read:

311       316.1905   Electrical, mechanical, or other speed  
312 calculating devices; power of arrest; evidence.--

313       (1) Whenever any peace officer engaged in the enforcement  
314 of the motor vehicle laws of this state uses an electronic,  
315 electrical, mechanical, or other device used to determine the  
316 speed of a motor vehicle on any highway, road, street, or other  
317 public way, such device shall be of a type approved by the  
318 Department of Public Safety and shall have been tested to  
319 determine that it is operating accurately. Tests for this  
320 purpose shall be made not less than once each 6 months,  
321 according to procedures and at regular intervals of time  
322 prescribed by the Department of Public Safety.

323       (3)(a) A witness otherwise qualified to testify shall be  
324 competent to give testimony against an accused violator of the  
325 motor vehicle laws of this state when such testimony is derived  
326 from the use of such an electronic, electrical, mechanical, or  
327 other device used in the calculation of speed, upon showing that  
328 the speed calculating device which was used had been tested.  
329 However, the operator of any visual average speed computer  
330 device shall first be certified as a competent operator of such  
331 device by the Department of Public Safety.

332       Section 14. Paragraph (f) of subsection (2) of section  
333 316.1906, Florida Statutes, is amended to read:

HB 1421

2006

334           316.1906 Radar speed-measuring devices; evidence,  
335       admissibility.--

336           (2) Evidence of the speed of a vehicle measured by any  
337       radar speed-measuring device shall be inadmissible in any  
338       proceeding with respect to an alleged violation of provisions of  
339       law regulating the lawful speed of vehicles, unless such  
340       evidence of speed is obtained by an officer who:

341           (f) Is using a radar unit that ~~which~~ meets the minimum  
342       design criteria for such units established by the Department of  
343       Public Highway Safety and Motor Vehicles.

344           Section 15. Section 316.611, Florida Statutes, is amended  
345       to read:

346           316.611 Tandem trailer equipment and use.--The Department  
347       of Transportation shall adopt rules to regulate tandem trailer  
348       truck equipment and use in the interest of safety, public  
349       convenience, and preservation of public road facilities. The  
350       rules shall apply according to their terms to all jurisdictions  
351       of the state except the Florida Turnpike. Such rules shall be  
352       enforced by the Department of Transportation, the Department of  
353       Public Highway Safety and Motor Vehicles, and local authorities.

354           Section 16. Subsection (9) of section 316.614, Florida  
355       Statutes, is amended to read:

356           316.614 Safety belt usage.--

357           (9) By January 1, 2006, each law enforcement agency in  
358       this state shall adopt departmental policies to prohibit the  
359       practice of racial profiling. When a law enforcement officer  
360       issues a citation for a violation of this section, the law  
361       enforcement officer must record the race and ethnicity of the

HB 1421

2006

violator. All law enforcement agencies must maintain such information and forward the information to the Department of Public Safety in a form and manner determined by that ~~the~~ department. The Department of Public Safety shall collect this information by jurisdiction and annually report the data to the Governor, the President of the Senate, and the Speaker of the House of Representatives. The report must show separate statewide totals for the state's county sheriffs and municipal law enforcement agencies, state law enforcement agencies, and state university law enforcement agencies.

Section 17. Paragraph (a) of subsection (1) of section 316.640, Florida Statutes, is amended to read:

316.640 Enforcement.--The enforcement of the traffic laws of this state is vested as follows:

(1) STATE.--

(a)1.a. The Division of the Florida Highway Patrol and the Division of the Florida Marine Patrol of the Department of Public Highway Safety and Motor Vehicles; the Division of Law Enforcement of the Fish and Wildlife Conservation Commission; the Division of Law Enforcement of the Department of Environmental Protection; law enforcement officers of the Department of Transportation; and the agents, inspectors, and officers of the Department of Law Enforcement each have authority to enforce all of the traffic laws of this state on all the streets and highways thereof and elsewhere throughout the state wherever the public has a right to travel by motor vehicle.

HB 1421

2006

b. University police officers shall have authority to enforce all of the traffic laws of this state when such violations occur on or about any property or facilities that are under the guidance, supervision, regulation, or control of a state university, a direct-support organization of such state university, or any other organization controlled by the state university or a direct-support organization of the state university, except that traffic laws may be enforced off-campus when hot pursuit originates on or adjacent to any such property or facilities.

c. Community college police officers shall have the authority to enforce all the traffic laws of this state only when such violations occur on any property or facilities that are under the guidance, supervision, regulation, or control of the community college system.

d. Police officers employed by an airport authority shall have the authority to enforce all of the traffic laws of this state only when such violations occur on any property or facilities that are owned or operated by an airport authority.

(I) An airport authority may employ as a parking enforcement specialist any individual who successfully completes a training program established and approved by the Criminal Justice Standards and Training Commission for parking enforcement specialists but who does not otherwise meet the uniform minimum standards established by the commission for law enforcement officers or auxiliary or part-time officers under s. 943.12. Nothing in this sub-sub-subparagraph shall be construed

HB 1421

2006

416 to permit the carrying of firearms or other weapons, nor shall  
417 such parking enforcement specialist have arrest authority.

418       (II) A parking enforcement specialist employed by an  
419 airport authority is authorized to enforce all state, county,  
420 and municipal laws and ordinances governing parking only when  
421 such violations are on property or facilities owned or operated  
422 by the airport authority employing the specialist, by  
423 appropriate state, county, or municipal traffic citation.

424       e. The Office of Agricultural Law Enforcement of the  
425 Department of Agriculture and Consumer Services shall have the  
426 authority to enforce traffic laws of this state.

427       f. School safety officers shall have the authority to  
428 enforce all of the traffic laws of this state when such  
429 violations occur on or about any property or facilities which  
430 are under the guidance, supervision, regulation, or control of  
431 the district school board.

432       2. An agency of the state as described in subparagraph 1.  
433 is prohibited from establishing a traffic citation quota. A  
434 violation of this subparagraph is not subject to the penalties  
435 provided in chapter 318.

436       3. Any disciplinary action taken or performance evaluation  
437 conducted by an agency of the state as described in subparagraph  
438 1. of a law enforcement officer's traffic enforcement activity  
439 must be in accordance with written work-performance standards.  
440 Such standards must be approved by the agency and any collective  
441 bargaining unit representing such law enforcement officer. A  
442 violation of this subparagraph is not subject to the penalties  
443 provided in chapter 318.

HB 1421

2006

4. The Division of the Florida Highway Patrol may employ as a traffic accident investigation officer any individual who successfully completes instruction in traffic accident investigation and court presentation through the Selective Traffic Enforcement Program as approved by the Criminal Justice Standards and Training Commission and funded through the National Highway Traffic Safety Administration or a similar program approved by the commission, but who does not necessarily meet the uniform minimum standards established by the commission for law enforcement officers or auxiliary law enforcement officers under chapter 943. Any such traffic accident investigation officer who makes an investigation at the scene of a traffic accident may issue traffic citations, based upon personal investigation, when he or she has reasonable and probable grounds to believe that a person who was involved in the accident committed an offense under this chapter, chapter 319, chapter 320, or chapter 322 in connection with the accident. This subparagraph does not permit the officer to carry firearms or other weapons, and such an officer does not have authority to make arrests.

Section 18. Section 321.011, Florida Statutes, is created to read:

321.011 Definitions.--As used in this chapter, the term:

(1) "Department" means the Department of Public Safety created in s. 20.60.

(2) "Director" means the executive director of the Department of Public Safety.

HB 1421

2006

471        (3) "Division" means the Division of the Highway Patrol of  
472 the department.

473        Section 19. Section 321.02, Florida Statutes, is amended  
474 to read:

475        321.02 Powers and duties of department, ~~highway patrol.~~--

476        (1) ~~The director of the Division of Highway Patrol of the~~  
477 ~~Department of Highway Safety and Motor Vehicles~~ shall also be  
478 the commander of the Florida Highway Patrol. The ~~said~~ department  
479 shall adopt ~~set up and promulgate~~ rules and regulations by which  
480 ~~the personnel of the~~ Florida Highway Patrol officers shall be  
481 examined, employed, trained, located, suspended, reduced in  
482 rank, discharged, recruited, paid and pensioned, subject to  
483 civil service provisions hereafter set out.

484        (2) The department may enter into contracts or agreements,  
485 with or without competitive bidding or procurement, to make  
486 available, on a fair, reasonable, nonexclusive, and  
487 nondiscriminatory basis, property and other structures under  
488 division control for the placement of new facilities by any  
489 wireless provider of mobile service as defined in 47 U.S.C. s.  
490 153(n) or s. 332(d), and any telecommunications company as  
491 defined in s. 364.02 when it is determined to be practical and  
492 feasible to make such property or other structures available.  
493 The department may, without adopting a rule, charge a just,  
494 reasonable, and nondiscriminatory fee for placement of the  
495 facilities, payable annually, based on the fair market value of  
496 space used by comparable communications facilities in the state.  
497 The department and a wireless provider or telecommunications  
498 company may negotiate the reduction or elimination of a fee in



HB 1421

2006

499 consideration of services provided to the division by the  
500 wireless provider or the telecommunications company. All such  
501 fees collected by the department shall be deposited directly  
502 into the State Agency Law Enforcement Radio System Trust Fund,  
503 and may be used to construct, maintain, or support the system.

504       (3) The department is further specifically authorized to  
505 purchase, sell, trade, rent, lease and maintain all necessary  
506 equipment, uniforms, motor vehicles, communication systems,  
507 housing facilities, and office space, and perform any other acts  
508 necessary for the proper administration and enforcement of this  
509 chapter. However, all supplies and equipment consisting of  
510 single items or in lots shall be purchased under the  
511 requirements of s. 287.057. Purchases shall be made by accepting  
512 the bid of the lowest responsive bidder, the right being  
513 reserved to reject all bids.

514       (4) The department shall prescribe a distinctive uniform  
515 and distinctive emblem to be worn by all officers of the Florida  
516 Highway Patrol. It shall be unlawful for any other person or  
517 persons to wear a similar uniform or emblem, or any part or  
518 parts thereof. The department shall also prescribe distinctive  
519 colors for use on motor vehicles and motorcycles operated by the  
520 Florida Highway Patrol. The prescribed colors shall be referred  
521 to as "Florida Highway Patrol black and tan."

522       Section 20. Section 321.03, Florida Statutes, is amended  
523 to read:

524       321.03 Imitations prohibited; penalty.--It shall be  
525 unlawful for any person or persons in the state to color or  
526 cause to be colored any motor vehicle or motorcycle the same or

HB 1421

2006

similar color as the color or colors so prescribed for the Florida Highway Patrol. Any person violating any of the provisions of this section or s. 321.02 with respect to uniforms, emblems, motor vehicles and motorcycles commits ~~shall be guilty of~~ a misdemeanor of the first degree, punishable as provided in s. 775.082 or s. 775.083. The department ~~of Highway Safety and Motor Vehicles~~ shall employ such clerical help and mechanics as may be necessary for its ~~the~~ economical and efficient operation ~~of such department~~.

Section 21. Subsections (1) and (3) of section 321.04, Florida Statutes, are amended to read:

321.04 Personnel ~~of the highway patrol~~; rank classifications; probationary status of new ~~patrol~~ officers; subsistence; special assignments.--

(1) The department ~~of Highway Safety and Motor Vehicles~~ shall employ patrol officers, as authorized by the Legislature in appropriating funds for their salaries exclusive of those members of the patrol who are assigned to and paid by special departments, + and shall establish the necessary supervisory ranks within the Florida Highway Patrol to efficiently supervise and carry out its ~~the designated~~ functions ~~of the patrol~~ and those of the department in accordance with the regulations established by the Department of Management Services. Management positions shall not exceed 6 percent of the total workforce.

(3) The Governor shall select ~~department of Highway Safety and Motor Vehicles shall assign~~ one patrol officer to be assigned by the department to the office of the Governor. + ~~said patrol~~ The officer so assigned shall be selected by the Governor

HB 1421

2006

555 ~~and shall have rank and pay not less than that of a lieutenant~~  
556 ~~within the department of the Florida Highway Patrol, and said~~  
557 ~~patrol officer so assigned shall be paid by the said department~~  
558 ~~from the department's appropriation, made to said department;~~  
559 ~~and said patrol officer shall have and receive all other~~  
560 ~~benefits provided for officers of that rank in this chapter or~~  
561 ~~any other statute now in existence or hereinafter enacted.~~

562 Section 22. Section 321.05, Florida Statutes, is amended  
563 to read:

564 321.05 Duties, functions, and powers of patrol  
565 officers.--The members of the Florida Highway Patrol are hereby  
566 declared to be conservators of the peace and law enforcement  
567 officers of the state, with the common-law right to arrest a  
568 person who, in the presence of the arresting officer, commits a  
569 felony or commits an affray or breach of the peace constituting  
570 a misdemeanor, with full power to bear arms; and they shall  
571 apprehend, without warrant, any person in the unlawful  
572 commission of any of the acts over which the members of the  
573 Florida Highway Patrol are given jurisdiction as hereinafter set  
574 out and deliver him or her to the sheriff of the county that  
575 further proceedings may be had against him or her according to  
576 law. In the performance of any of the powers, duties, and  
577 functions authorized by law, members of the Florida Highway  
578 Patrol shall have the same protections and immunities afforded  
579 other peace officers, which shall be recognized by all courts  
580 having jurisdiction over offenses against the laws of this  
581 state, and shall have authority to apply for, serve, and execute  
582 search warrants, arrest warrants, capias, and other process of

HB 1421

2006

583 the court in those matters in which patrol officers have primary  
584 responsibility as set forth in subsection (1). The patrol  
585 officers under the direction and supervision of the department  
586 ~~of Highway Safety and Motor Vehicles~~ shall perform and exercise  
587 throughout the state the following duties, functions, and  
588 powers:

589       (1) To patrol the state highways and regulate, control,  
590 and direct the movement of traffic thereon; to maintain the  
591 public peace by preventing violence on highways; to apprehend  
592 fugitives from justice; to enforce all laws now in effect  
593 regulating and governing traffic, travel, and public safety upon  
594 the public highways and providing for the protection of the  
595 public highways and public property thereon; to make arrests  
596 without warrant for the violation of any state law committed in  
597 their presence in accordance with the laws of this state;  
598 providing that no search shall be made unless it is incident to  
599 a lawful arrest, to regulate and direct traffic concentrations  
600 and congestions; to enforce laws governing the operation,  
601 licensing, and taxing and limiting the size, weight, width,  
602 length, and speed of vehicles and licensing and controlling the  
603 operations of drivers and operators of vehicles; to cooperate  
604 with officials designated by law to collect all state fees and  
605 revenues levied as an incident to the use or right to use the  
606 highways for any purpose; to require the drivers of vehicles to  
607 stop and exhibit their driver's licenses, registration cards, or  
608 documents required by law to be carried by such vehicles; to  
609 investigate traffic accidents, secure testimony of witnesses and  
610 of persons involved, and make report thereof with copy, when

HB 1421

2006

requested in writing, to any person in interest or his or her attorney; to investigate reported thefts of vehicles and to seize contraband or stolen property on or being transported on the highways.

(2) To assist other constituted law enforcement officers of the state to quell mobs and riots, guard prisoners, and police disaster areas.

(3) (a) To make arrests while in fresh pursuit of a person believed to have violated the traffic and other laws.

(b) To make arrest of a person wanted for a felony or against whom a warrant has been issued on any charge in violation of federal, state, or county laws or municipal ordinances.

(4) (a) All fines and costs and the proceeds of the forfeiture of bail bonds and recognizances resulting from the enforcement of this chapter by patrol officers shall be paid into the fine and forfeiture fund established pursuant to s. 142.01 of the county where the offense is committed. In all cases of arrest by patrol officers, the person arrested shall be delivered forthwith by said officer to the sheriff of the county, or he or she shall obtain from such person arrested a recognizance or, if deemed necessary, a cash bond or other sufficient security conditioned for his or her appearance before the proper tribunal of such county to answer the charge for which he or she has been arrested; and all fees accruing shall be taxed against the party arrested, which fees are hereby declared to be part of the compensation of said sheriffs authorized to be fixed by the Legislature under s. 5(c), Art. II

HB 1421

2006

639 of the State Constitution, to be paid such sheriffs in the same  
640 manner as fees are paid for like services in other criminal  
641 cases. All patrol officers are hereby directed to deliver all  
642 bonds accepted and approved by them to the sheriff of the county  
643 in which the offense is alleged to have been committed. However,  
644 no sheriff shall be paid any arrest fee for the arrest of a  
645 person for violation of any section of chapter 316 when the  
646 arresting officer was transported in a Florida Highway Patrol  
647 car to the vicinity where the arrest was made; and no sheriff  
648 shall be paid any fee for mileage for himself or herself or a  
649 prisoner for miles traveled in a Florida Highway Patrol car. No  
650 patrol officer shall be entitled to any fee or mileage cost  
651 except when responding to a subpoena in a civil cause or except  
652 when such patrol officer is appearing as an official witness to  
653 testify at any hearing or law action in any court of this state  
654 as a direct result of his or her employment as a patrol officer  
655 during time not compensated as a part of his or her normal  
656 duties. Nothing herein shall be construed as limiting the power  
657 to locate and to take from any person under arrest or about to  
658 be arrested deadly weapons. Nothing contained in this section  
659 shall be construed as a limitation upon existing powers and  
660 duties of sheriffs or police officers.

661       (b) Any person so arrested and released on his or her own  
662 recognizance by an officer and who shall fail to appear or  
663 respond to a notice to appear shall, in addition to the traffic  
664 violation charge, commits ~~be guilty of~~ a noncriminal traffic  
665 infraction subject to the penalty provided in s. 318.18(2).

HB 1421

2006

666 (5) The department may employ or assign some fit and  
667 suitable person with experience in the field of public relations  
668 who shall have the duty to promote, coordinate, and publicize  
669 the traffic safety activities in the state and assign such  
670 person to the office of the Governor at a salary to be fixed by  
671 the department. The person so assigned or employed shall be a  
672 uniformed member of the ~~uniform division of the~~ Florida Highway  
673 Patrol, and he or she shall have the pay and rank of lieutenant  
674 while on such assignment.

675 (6) The department may adopt ~~division of Florida Highway~~  
676 ~~Patrol is authorized to promulgate~~ rules under ss. 120.536(1)  
677 and 120.54 ~~and regulations which may be necessary to implement~~  
678 ~~the provisions of~~ chapter 316.

679 Section 23. Subsection (2) of section 321.051, Florida  
680 Statutes, is amended to read:

681 321.051 Florida Highway Patrol wrecker operator system;  
682 penalties for operation outside of system.--

683 (2) ~~The division of Florida Highway Patrol of the~~  
684 ~~Department of Highway Safety and Motor Vehicles~~ is authorized to  
685 establish within areas designated by the patrol a wrecker  
686 operator system using qualified, reputable wrecker operators for  
687 removal and storage of wrecked or disabled vehicles from a crash  
688 scene or for removal and storage of abandoned vehicles, in the  
689 event the owner or operator is incapacitated or unavailable or  
690 leaves the procurement of wrecker service to the officer at the  
691 scene. All reputable wrecker operators shall be eligible for use  
692 in the system provided their equipment and drivers meet  
693 recognized safety qualifications and mechanical standards set by

HB 1421

2006

694 rules of the division of ~~Florida Highway Patrol~~ for the size of  
 695 vehicle it is designed to handle. The division is authorized to  
 696 limit the number of wrecker operators participating in the  
 697 wrecker operator system, which authority shall not affect  
 698 wrecker operators currently participating in the system  
 699 established by this section. The division is authorized to  
 700 establish maximum rates for the towing and storage of vehicles  
 701 removed at the division's request, where such rates have not  
 702 been set by a county or municipality pursuant to s. 125.0103 or  
 703 s. 166.043. Such rates shall not be considered rules for the  
 704 purpose of chapter 120; however, the department shall establish  
 705 by rule a procedure for setting such rates. Any provision in  
 706 chapter 120 to the contrary notwithstanding, a final order of  
 707 the department denying, suspending, or revoking a wrecker  
 708 operator's participation in the system shall be reviewable in  
 709 the manner and within the time provided by the Florida Rules of  
 710 Appellate Procedure only by a writ of certiorari issued by the  
 711 circuit court in the county wherein such wrecker operator  
 712 resides.

713       Section 24.   Section 321.065, Florida Statutes, is amended  
 714 to read:

715       321.065   Traffic accident investigation officers,  
 716 ~~employment, standards.~~--The department may employ traffic  
 717 accident investigation officers who must complete any applicable  
 718 standards adopted by the division ~~Florida Highway Patrol~~,  
 719 including, but not limited to: cognitive testing, drug testing,  
 720 polygraph testing, psychological testing, and an extensive  
 721 background check, including a credit check.



HB 1421

2006

722           Section 25. Subsection (1) of section 321.23, Florida  
723 Statutes, is amended to read:

724           321.23 Public records; fees for copies; destruction of  
725 obsolete records; photographing records; effect as evidence.--

726           (1) The purpose of this section is to make available for  
727 the department's use of the ~~Department of Highway Safety and~~  
728 ~~Motor Vehicles~~ sufficient floor space to enable it to  
729 efficiently administer its the affairs of the ~~department~~ and to  
730 provide fees for copies of public records.

731           Section 26. Section 321.25, Florida Statutes, is amended  
732 to read:

733           321.25 Training provided at patrol schools.--The  
734 department of ~~Highway Safety and Motor Vehicles~~ is authorized to  
735 provide for the training of law enforcement officials and  
736 individuals in matters relating to the duties, functions, and  
737 powers of the Florida Highway Patrol and the Florida Marine  
738 Patrol in the schools established by the department for the  
739 training of highway patrol and marine patrol candidates and  
740 officers. The department of ~~Highway Safety and Motor Vehicles~~ is  
741 authorized to charge a fee for providing the training authorized  
742 by this section. The fee shall be charged to persons attending  
743 the training. The fee shall be based on the department's  
744 ~~Department of Highway Safety and Motor Vehicles'~~ costs for  
745 providing the training, and such costs may include, but are not  
746 limited to, tuition, lodging, and meals. Revenues from the fees  
747 shall be used to offset the department's ~~Department of Highway~~  
748 ~~Safety and Motor Vehicles'~~ costs for providing the training. The  
749 cost of training local enforcement officers shall be paid for by

HB 1421

2006

750 their respective offices, counties, or municipalities, as the  
751 case may be. Such cost shall be deemed a proper county or  
752 municipal expense or a proper expenditure of the office of  
753 sheriff.

754       Section 27. The Division of Statutory Revision is  
755 requested to designate ss. 327.01-327.804, Florida Statutes, as  
756 part I of chapter 327, Florida Statutes, entitled "Vessel  
757 Safety," and ss. 327.901-327.9065, Florida Statutes, as created  
758 by this act, as part II of that chapter, entitled "Florida  
759 Marine Patrol." The title of chapter 327, Florida Statutes,  
760 shall remain "Vessel Safety."

761       Section 28. Section 327.901, Florida Statutes, is created  
762 to read:

763       327.901 Definitions.--As used in this part, the term:

764       (1) "Department" means the Department of Public Safety  
765 created in s. 20.60.

766       (2) "Director" means the executive director of the  
767 Department of Public Safety.

768       (3) "Patrol" means the Florida Marine Patrol.

769       Section 29. Section 327.902, Florida Statutes, is created  
770 to read:

771       327.902 Powers and duties of department.--

772       (1) The department shall adopt rules by which the officers  
773 of the patrol shall be examined, employed, trained, located,  
774 suspended, reduced in rank, discharged, recruited, paid, and  
775 pensioned, subject to civil service provisions hereinafter set  
776 out.

HB 1421

2006

777        (2) The department shall have the same powers and duties  
778 regarding supplies and equipment for the patrol as are provided  
779 for the Florida Highway Patrol in s. 321.02(3).

780        (3) The department shall prescribe a distinctive uniform  
781 and distinctive emblem to be worn by all patrol officers. It  
782 shall be unlawful for any other person or persons to wear a  
783 similar uniform or emblem or any part or parts thereof. The  
784 department shall also prescribe distinctive colors for use on  
785 motor vehicles and vessels operated by the patrol. The  
786 prescribed colors for the patrol shall be referred to as  
787 "Florida Marine Patrol black and gray."

788        Section 30. Section 327.903, Florida Statutes, is created  
789 to read:

790        327.903 Imitations prohibited; penalty.--It shall be  
791 unlawful for any person or persons in the state to color or  
792 cause to be colored any motor vehicle, vessel, or motorcycle the  
793 same or similar color as the color or colors so prescribed for  
794 the patrol. Any person violating any of the provisions of this  
795 section or s. 327.902 with respect to uniforms, emblems, motor  
796 vehicles, vessels, and motorcycles commits a misdemeanor of the  
797 first degree, punishable as provided in s. 775.082 or s.  
798 775.083.

799        Section 31. Section 327.904, Florida Statutes, is created  
800 to read:

801        327.904 Personnel.--

802        (1) The department shall employ patrol officers as  
803 authorized by legislative appropriation, exclusive of those who  
804 are assigned to and paid by special departments, and shall

HB 1421

2006

establish the necessary supervisory ranks within the patrol to  
efficiently supervise and carry out its functions and those of  
the department in accordance with the personnel regulations of  
the Department of Management Services. Management positions  
shall not exceed 6 percent of the total workforce.

(2) Each person who is employed as a patrol officer shall  
be carried on a probationary status for the period of 1 year  
from date of employment, during which period he or she may be  
dismissed without recourse. Patrol officers when sent on special  
detail or missions out of their regular assigned territories or  
headquarters shall be reimbursed for travel expenses as provided  
in s. 112.061.

Section 32. Section 327.905, Florida Statutes, is created  
to read:

327.905 Duties and powers of officers; rulemaking.--

(1) The patrol officers are declared to be conservators of  
the peace and law enforcement officers of the state, with the  
common-law right to arrest a person who, in the presence of the  
arresting officer, commits a felony or commits an affray or  
breach of the peace constituting a misdemeanor, with full power  
to bear arms; and they shall apprehend, without warrant, any  
person in the unlawful commission of any of the acts over which  
the officers of the patrol are given jurisdiction as hereinafter  
set out and deliver him or her to the sheriff of the county  
wherein such unlawful act occurred in order that further  
proceedings may be had against him or her according to law. In  
the performance of any of the powers, duties, and functions  
authorized by law, patrol officers shall have the same

HB 1421

2006

833 protections and immunities afforded other peace officers, which  
834 shall be recognized by all courts having jurisdiction over  
835 offenses against the laws of this state, and shall have  
836 authority to apply for, serve, and execute search warrants,  
837 arrest warrants, capias, and other process of the court in those  
838 matters in which patrol officers have primary responsibility as  
839 set forth in paragraph (2)(a).

840 (2)(a) Patrol officers shall perform and exercise  
841 throughout the state the duties, functions, and powers provided  
842 in s. 20.60(3)(b) as required by the director.

843 (b) In addition, patrol officers shall have all duties and  
844 powers as provided for the officers of the Florida Highway  
845 Patrol in s. 321.05(2) and (3).

846 (3) The department may adopt rules under ss. 120.536(1)  
847 and 120.54 to implement this part.

848 Section 33. Section 327.9065, Florida Statutes, is created  
849 to read:

850 327.9065 Boating accident investigation officers.--The  
851 department may employ boating accident investigation officers  
852 who must complete any applicable standards adopted by the  
853 patrol, including, but not limited to: cognitive testing, drug  
854 testing, polygraph testing, psychological testing, and an  
855 extensive background check, including a credit check.

856 Section 34. Subsection (3) of section 337.406, Florida  
857 Statutes, is amended to read:

858 337.406 Unlawful use of state transportation facility  
859 right-of-way; penalties.--

HB 1421

2006

860           (3) The Department of Public Highway Safety and ~~Motor~~  
861 ~~Vehicles~~ and other law enforcement agencies are authorized and  
862 directed to enforce this statute.

863           Section 35. Subsection (2) of section 338.239, Florida  
864 Statutes, is amended to read:

865           338.239 Traffic control on the turnpike system.--

866           (2) Members of the Florida Highway Patrol are vested with  
867 the power, and charged with the duty, to enforce the rules of  
868 the department. Approved expenditures incurred by the Florida  
869 Highway Patrol in carrying out its powers and duties under ss.  
870 338.22-338.241 may be treated as a part of the cost of the  
871 operation of the turnpike system, and the Department of Public  
872 ~~Highway~~ Safety and ~~Motor Vehicles~~ shall be reimbursed by the  
873 turnpike enterprise for such expenses incurred on the turnpike  
874 system. Florida Highway Patrol Troop K shall be headquartered  
875 with the turnpike enterprise and shall be the official and  
876 preferred law enforcement troop for the turnpike system. The  
877 Department of Public Highway Safety and ~~Motor Vehicles~~ may, upon  
878 request of the executive director of the turnpike enterprise and  
879 approval of the Legislature, increase the number of authorized  
880 positions for Troop K, or the executive director of the turnpike  
881 enterprise may contract with the Department of Public Highway  
882 ~~Safety and Motor Vehicles~~ for additional troops to patrol the  
883 turnpike system.

884           Section 36. Subsection (1) of section 339.281, Florida  
885 Statutes, is amended to read:

886           339.281 Damage to transportation facility by vessel;  
887 marine accident report; investigative authorities; penalties.--

HB 1421

2006

888           (1) Whenever any vessel has caused damage to a  
889 transportation facility, the managing owner, agent, or master of  
890 such vessel shall immediately, or as soon thereafter as  
891 possible, report the same to the nearest Fish and Wildlife  
892 Conservation Commission officer, an officer of the Florida  
893 Marine Patrol, the sheriff of the county wherein such accident  
894 occurred, or the Florida Highway Patrol, who shall immediately  
895 go to the scene of the accident and, if necessary, board the  
896 vessel subsequent to the accident in pursuance of its  
897 investigation. The law enforcement agency investigating the  
898 accident shall submit a copy of its report to the department.

899           Section 37. Subsection (4) of section 370.0603, Florida  
900 Statutes, is amended to read:

901           370.0603 Marine Resources Conservation Trust Fund;  
902 purposes.--

903           (4) Funds transferred to the Marine Resources Conservation  
904 Trust Fund from the Fuel Tax Collection Trust Fund pursuant to  
905 s. 206.606 shall be used for the following purposes:

906           (a) To provide additional water-related law enforcement  
907 positions within the Fish and Wildlife Conservation Commission  
908 primarily for the purpose of enforcing laws designed to protect  
909 manatee populations. Law enforcement positions funded under this  
910 provision shall be assigned to counties having the highest  
911 incidence of manatee deaths and injuries.

912           (b) For the placement of uniform waterway markers on state  
913 waters.

HB 1421

2006

914           (c) To provide funding for construction and maintenance of  
915 publicly owned boat ramps, piers, and docks, directly and  
916 through grants to counties and municipalities.

917           (d) To implement and administer programs related to  
918 boating safety and education, manatee technical avoidance  
919 technology, and economic development initiatives to promote  
920 boating in the state, including competitive grants programs as  
921 provided in s. 327.47.

922           (e) For other activities of the Florida Marine Patrol  
923 ~~Boating and Waterways Section~~ such as coordinating the  
924 submission of state comments on boating-related events.

925

926 Funds not used in one fiscal year must be carried over for use  
927 in subsequent years.

928           Section 38. Paragraph (b) of subsection (2) of section  
929 401.245, Florida Statutes, is amended to read:

930           401.245   Emergency Medical Services Advisory Council.--

931           (2)

932           (b) Representation on the Emergency Medical Services  
933 Advisory Council shall include: two licensed physicians who are  
934 "medical directors" as defined in s. 401.23(15) or whose medical  
935 practice is closely related to emergency medical services; two  
936 emergency medical service administrators, one of whom is  
937 employed by a fire service; two certified paramedics, one of  
938 whom is employed by a fire service; two certified emergency  
939 medical technicians, one of whom is employed by a fire service;  
940 one emergency medical services educator; one emergency nurse;  
941 one hospital administrator; one representative of air ambulance



HB 1421

2006

services; one representative of a commercial ambulance operator; and two laypersons who are in no way connected with emergency medical services, one of whom is a representative of the elderly. Ex officio members of the advisory council from state agencies shall include, but shall not be limited to, representatives from the Department of Education, the Department of Management Services, the State Fire Marshal, the Department of Public Highway Safety and Motor Vehicles, the Department of Transportation, and the Department of Community Affairs.

Section 39. Paragraph (c) of subsection (2) of section 403.413, Florida Statutes, is amended to read:

403.413 Florida Litter Law.--

(2) DEFINITIONS.--As used in this section:

(c) "Law enforcement officer" means any officer of the Florida Highway Patrol, the Florida Marine Patrol, a county sheriff's department, a municipal law enforcement department, a law enforcement department of any other political subdivision, the department, or the Fish and Wildlife Conservation Commission. In addition, and solely for the purposes of this section, "law enforcement officer" means any employee of a county or municipal park or recreation department designated by the department head as a litter enforcement officer.

Section 40. Paragraph (d) of subsection (3) of section 790.25, Florida Statutes, is amended to read:

790.25 Lawful ownership, possession, and use of firearms and other weapons.--

(3) LAWFUL USES.--The provisions of ss. 790.053 and 790.06 do not apply in the following instances, and, despite such

HB 1421

2006

sections, it is lawful for the following persons to own, possess, and lawfully use firearms and other weapons, ammunition, and supplies for lawful purposes:

(d) Sheriffs, marshals, prison or jail wardens, police officers, Florida Highway Patrol officers, Florida Marine Patrol officers, game wardens, revenue officers, forest officials, special officers appointed under the provisions of chapter 354, and other peace and law enforcement officers and their deputies and assistants and full-time paid peace officers of other states and of the Federal Government who are carrying out official duties while in this state;

Section 41. Section 843.08, Florida Statutes, is amended to read:

843.08 Falsely personating officer, etc.--A person who falsely assumes or pretends to be a sheriff, officer of the Florida Highway Patrol, officer of the Florida Marine Patrol, officer of the Fish and Wildlife Conservation Commission, officer of the Department of Environmental Protection, officer of the Department of Transportation, officer of the Department of Corrections, correctional probation officer, deputy sheriff, state attorney or assistant state attorney, statewide prosecutor or assistant statewide prosecutor, state attorney investigator, coroner, police officer, lottery special agent or lottery investigator, beverage enforcement agent, or watchman, or any member of the Parole Commission and any administrative aide or supervisor employed by the commission, or any personnel or representative of the Department of Law Enforcement, and takes upon himself or herself to act as such, or to require any other

HB 1421

2006

998 person to aid or assist him or her in a matter pertaining to the  
999 duty of any such officer, commits a felony of the third degree,  
1000 punishable as provided in s. 775.082, s. 775.083, or s. 775.084;  
1001 however, a person who falsely personates any such officer during  
1002 the course of the commission of a felony commits a felony of the  
1003 second degree, punishable as provided in s. 775.082, s. 775.083,  
1004 or s. 775.084; except that if the commission of the felony  
1005 results in the death or personal injury of another human being,  
1006 the person commits a felony of the first degree, punishable as  
1007 provided in s. 775.082, s. 775.083, or s. 775.084.

1008 Section 42. Section 870.04, Florida Statutes, is amended  
1009 to read:

1010 870.04 Specified officers to disperse riotous  
1011 assembly.--If any number of persons, whether armed or not, are  
1012 unlawfully, riotously or tumultuously assembled in any county,  
1013 city or municipality, the sheriff or the sheriff's deputies, or  
1014 the mayor, or any commissioner, council member, alderman or  
1015 police officer of the said city or municipality, or any officer  
1016 or member of the Florida Highway Patrol, any officer of the  
1017 Florida Marine Patrol, or any officer or agent of the Fish and  
1018 Wildlife Conservation Commission, Department of Environmental  
1019 Protection, or beverage enforcement agent, any personnel or  
1020 representatives of the Department of Law Enforcement or its  
1021 successor, or any other peace officer, shall go among the  
1022 persons so assembled, or as near to them as may be with safety,  
1023 and shall in the name of the state command all the persons so  
1024 assembled immediately and peaceably to disperse; and if such  
1025 persons do not thereupon immediately and peaceably disperse,

HB 1421

2006

1026 said officers shall command the assistance of all such persons  
1027 in seizing, arresting and securing such persons in custody; and  
1028 if any person present being so commanded to aid and assist in  
1029 seizing and securing such rioter or persons so unlawfully  
1030 assembled, or in suppressing such riot or unlawful assembly,  
1031 refuses or neglects to obey such command, or, when required by  
1032 such officers to depart from the place, refuses and neglects to  
1033 do so, the person shall be deemed one of the rioters or persons  
1034 unlawfully assembled, and may be prosecuted and punished  
1035 accordingly.

1036       Section 43. This act shall take effect July 1, 2006.



## HOUSE OF REPRESENTATIVES STAFF ANALYSIS

**BILL #:** HB 1451

Public Records

**SPONSOR(S):** Gannon

**TIED BILLS:** HB 1449

**IDEN./SIM. BILLS:** SB 2564

---

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1) <u>Health Care General Committee</u>	<u>9 Y, 0 N</u>	<u>Ciccone</u>	<u>Brown-Barrios</u>
2) <u>Governmental Operations Committee</u>	<u></u>	<u>Williamson</u>	<u>Williamson</u>
3) <u>Health &amp; Families Council</u>	<u></u>	<u></u>	<u></u>
4) <u></u>	<u></u>	<u></u>	<u></u>
5) <u></u>	<u></u>	<u></u>	<u></u>

---

### SUMMARY ANALYSIS

HB 1451 creates a public records exemption for the Florida Center for Brain Tumor Research. The following information is confidential and exempt from public records requirements: an individual's medical record and any information received from an individual from another state or nation or the Federal Government that is otherwise confidential or exempt. The bill provides for future review and repeal of the exemption, provides a statement of public necessity, and provides a contingent effective date.

This bill does not grant rule-making authority to any administrative agency.

**This bill requires a two-thirds vote of the members present and voting for passage.**

## FULL ANALYSIS

### I. SUBSTANTIVE ANALYSIS

#### A. HOUSE PRINCIPLES ANALYSIS:

Provide limited government – The bill decreases access to public records.

#### B. EFFECT OF PROPOSED CHANGES:

##### Public Records Law

Article I, s. 24(a), Florida Constitution, sets forth the state's public policy regarding access to government records. The section guarantees every person a right to inspect or copy any public record of the legislative, executive, and judicial branches of government. The Legislature, however, may provide by general law for the exemption of records from the requirements of Article I, s. 24(a), Florida Constitution. The general law must state with specificity the public necessity justifying the exemption (public necessity statement) and must be no broader than necessary to accomplish its purpose. Public policy regarding access to government records also is addressed in the Florida Statutes.

Chapter 119, F.S., more completely addresses the issue of public records. Section 119.07(1), F.S., also guarantees every person a right to inspect, examine, and copy any state, county, or municipal record.

##### Open Government Sunset Review Act

Section 119.15, F.S., the "Open Government Sunset Review Act," sets forth a legislative review process that requires newly created or expanded exemptions to include an automatic repeal of the exemption on October 2nd of the fifth year after enactment or substantial amendment, unless the Legislature reenacts the exemption. It provides that a public records or public meetings exemption may be created or maintained only if it serves an identifiable public purpose, and may be no broader than is necessary to meet one of the following public purposes:

- Allowing the state or its political subdivisions to effectively and efficiently administer a governmental program, which administration would be significantly impaired without the exemption;
- Protecting sensitive personal information that, if released, would be defamatory or would jeopardize an individual's safety. However, only the identity of an individual may be exempted under this provision; or
- Protecting trade or business secrets.

##### Effect of Bill

This bill creates a public records exemption for the Florida Center for Brain Tumor Research. The following information is confidential and exempt<sup>1</sup> from public records requirements:

- An individual's medical record.
- Information received from an individual from another state or nation or the Federal Government, which is confidential or exempt pursuant to the laws of that state or nation or pursuant to federal law.

---

<sup>1</sup> There is a difference between information and records that the Legislature has designated exempt from public disclosure and those the Legislature has deemed confidential and exempt. Information and records classified exempt from public disclosure are permitted to be disclosed under certain circumstances. *See City of Riviera Beach v. Barfield*, 642 So. 2d 1135 (Fla. 4th DCA 1994); *Williams v. City of Minneola*, 575 So. 2d 687 (Fla. 5th DCA 1991). If the Legislature designates certain information and records confidential and exempt from public disclosure, such information and records may not be released by the records custodian to anyone other than the persons or entities specifically designated in the statutory exemption. *See Attorney General Opinion 85-62*, August 1, 1985.

The bill provides for future review and repeal of the exemption on October 2, 2011. It also provides a statement of public necessity and a contingent effective date.

**C. SECTION DIRECTORY:**

Section 1. Creates s. 381.8531, F.S., to create a public records exemption for the Florida Center for Brain Tumor Research.

Section 2. Provides a public necessity statement.

Section 3. Provides a July 1, 2006 effective date that is contingent upon the passage of HB 1449 or similar legislation.

**II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT**

**A. FISCAL IMPACT ON STATE GOVERNMENT:**

**1. Revenues:**

This bill does not create, modify, amend or eliminate a state revenue source.

**2. Expenditures:**

This bill does not create, modify, amend, or eliminate a state expenditure.

**B. FISCAL IMPACT ON LOCAL GOVERNMENTS:**

**1. Revenues:**

This bill does not create, modify, amend, or eliminate a local revenue source.

**2. Expenditures:**

This bill does not create, modify, amend, or eliminate a local expenditure.

**C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:**

None.

**D. FISCAL COMMENTS:**

This bill could create a fiscal impact on the Florida Center for Brain Tumor Research, because staff responsible for complying with public records requests will require training related to the newly created public records exemption. In addition, the center could incur costs associated with redacting the confidential and exempt information prior to releasing a record.

**III. COMMENTS**

**A. CONSTITUTIONAL ISSUES:**

**1. Applicability of Municipality/County Mandates Provision:**

This bill does not require counties or municipalities to spend funds or to take an action requiring the expenditure of funds. The bill does not reduce the percentage of a state tax shared with counties or municipalities. The bill does not reduce the authority that municipalities have to raise revenue.



2. Other:

Vote Requirement

Article I, s. 24(c) of the Florida Constitution, requires a two-thirds vote of the members present and voting for passage of a newly created public records or public meetings exemption. The bill creates a public records exemption. Thus, it requires a two-thirds vote for passage.

Public Necessity Statement

Article I, s. 24 (c) of the Florida Constitution, requires a statement of public necessity (public necessity statement) for a newly created public records or public meetings exemption. The bill creates a public records exemption. Thus, it includes a public necessity statement.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

Drafting Issues: Title of the Bill

Lines 3 through 6 of the title provide that the bill creates a public records exemption for personal identifying information contained in records of the Florida Center for Brain Tumor Research. The bill, however, creates a public records exemption for medical records and information received from another state or nation or the Federal Government, which is confidential or exempt. The sponsor may want to consider an amendment to conform the title to the bill.

**IV. AMENDMENTS/COMMITTEE SUBSTITUTE & COMBINED BILL CHANGES**

None.

HB 1451

2006

1 A bill to be entitled  
2 An act relating to public records; creating s. 381.8531,  
3 F.S.; providing an exemption from public records  
4 requirements for personal identifying information  
5 contained in records of the Florida Center for Brain Tumor  
6 Research; providing for future review and repeal;  
7 providing a finding of public necessity; providing a  
8 contingent effective date.

9  
10 Be It Enacted by the Legislature of the State of Florida:

11  
12 Section 1. Section 381.8531, Florida Statutes, is created  
13 to read:

14 381.8531 Florida Center for Brain Tumor Research; public  
15 records exemption.--

16 (1) The following information held by the Florida Center  
17 for Brain Tumor Research is confidential and exempt from s.  
18 119.07(1) and s. 24, Art. I of the State Constitution:

19 (a) An individual's medical record.

20 (b) Any information received from an individual from  
21 another state or nation or the Federal Government that is  
22 otherwise confidential or exempt pursuant to the laws of that  
23 state or nation or pursuant to federal law.

24 (2) This section is subject to the Open Government Sunset  
25 Review Act in accordance with s. 119.15 and shall stand repealed  
26 on October 2, 2011, unless reviewed and saved from repeal  
27 through reenactment by the Legislature.

HB 1451

2006

28        Section 2. The Legislature finds that it is a public  
29 necessity that an individual's medical record held by the brain  
30 tumor registry developed pursuant to s. 381.853(3), Florida  
31 Statutes, be made confidential and exempt from public records  
32 requirements. Matters of personal health are traditionally  
33 private and confidential concerns between the patient and the  
34 health care provider. The private and confidential nature of  
35 personal health matters pervades both the public and private  
36 health care sectors. For these reasons, the individual's  
37 expectation of and right to privacy in all matters regarding his  
38 or her personal health necessitates this exemption. The  
39 Legislature further finds that it is a public necessity to  
40 protect a patient's medical record because the release of such  
41 record could be defamatory to the patient or could cause  
42 unwarranted damage to the name or reputation of that patient.  
43 Finally, the Legislature finds that it is a public necessity to  
44 protect information received by the brain tumor registry from an  
45 individual from another state or nation or the Federal  
46 Government that is otherwise exempt or confidential pursuant to  
47 the laws of that state or nation or pursuant to federal law.  
48 Without this protection, another state or nation or the Federal  
49 Government might be less likely to provide information to the  
50 registry in the furtherance of its duties and responsibilities.

51        Section 3. This act shall take effect July 1, 2006, if  
52 House Bill 1449 or similar legislation is adopted in the same  
53 legislative session or an extension thereof and becomes law.



## HOUSE OF REPRESENTATIVES STAFF ANALYSIS

**BILL #:** HB 1469 CS                      Public Records  
**SPONSOR(S):** Grant  
**TIED BILLS:** HB 1467                      **IDEN./SIM. BILLS:** SB 2656

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1) <u>Economic Development, Trade &amp; Banking Committee</u>	<u>10 Y, 0 N, w/CS</u>	<u>Carlson</u>	<u>Carlson</u>
2) <u>Governmental Operations Committee</u>	<u></u>	<u>Williamson</u>	<u>Williamson</u>
3) <u>Commerce Council</u>	<u></u>	<u></u>	<u></u>
4) <u></u>	<u></u>	<u></u>	<u></u>
5) <u></u>	<u></u>	<u></u>	<u></u>

### SUMMARY ANALYSIS

The bill creates a public records exemption for certain information and trade secrets relating to venture capital investment in Florida businesses under the Florida Capital Formation Act created by HB 1467. Specifically, the bill makes the following information confidential and exempt from public records requirements:

- Trade secrets, as defined in the Uniform Trade Secrets Act;
- Tax identification numbers;
- Analyses of gross receipts;
- Amount of taxes paid;
- Amount of capital investment;
- Amount of employee wages paid; and
- Detailed documentation to substantiate performance information included in portfolio data pertaining to specific companies within the portfolios of venture capital funds receiving capital investment from the Florida Opportunity Fund.

The bill provides for future review and repeal of the exemption, provides a statement of public necessity, and provides a contingent effective date.

The bill does not grant rulemaking authority to any administrative agency.

The bill could have a minimal fiscal impact on state and local governments.

**The bill requires a two-thirds vote of the members present and voting for passage.**

## FULL ANALYSIS

### I. SUBSTANTIVE ANALYSIS

#### A. HOUSE PRINCIPLES ANALYSIS:

Provide limited government - The bill will reduce access to public records.

#### B. EFFECT OF PROPOSED CHANGES:

##### Public Records Law

Article I, s. 24(a), Florida Constitution, sets forth the state's public policy regarding access to government records. The section guarantees every person a right to inspect or copy any public record of the legislative, executive, and judicial branches of government. The Legislature, however, may provide by general law for the exemption of records from the requirements of Article I, s. 24(a), Florida Constitution. The general law must state with specificity the public necessity justifying the exemption (public necessity statement) and must be no broader than necessary to accomplish its purpose. Public policy regarding access to government records also is addressed in the Florida Statutes.

Chapter 119, F.S., more completely addresses the issue of public records. Section 119.07(1), F.S., also guarantees every person a right to inspect, examine, and copy any state, county, or municipal record.

##### Open Government Sunset Review Act

Section 119.15, F.S., the "Open Government Sunset Review Act," sets forth a legislative review process that requires newly created or expanded exemptions to include an automatic repeal of the exemption on October 2nd of the fifth year after enactment or substantial amendment, unless the Legislature reenacts the exemption. It provides that a public records or public meetings exemption may be created or maintained only if it serves an identifiable public purpose, and may be no broader than is necessary to meet one of the following public purposes:

- Allowing the state or its political subdivisions to effectively and efficiently administer a governmental program, which administration would be significantly impaired without the exemption;
- Protecting sensitive personal information that, if released, would be defamatory or would jeopardize an individual's safety. However, only the identity of an individual may be exempted under this provision; or
- Protecting trade or business secrets.

##### Florida Capital Formation Act

HB 1467 creates the Florida Capital Formation Act, which is intended to enhance venture capital investment in Florida businesses. The bill creates the following entities:

- The Florida Opportunity Fund, which will invest on a "fund of funds" basis in venture capital firms that invest in Florida startup businesses. The Fund will not make direct investments in Florida businesses;
- The Florida Opportunity Fund Management Corporation, a subsidiary non-profit corporation of Enterprise Florida, Inc., which will manage the Florida Opportunity Fund; and
- The Florida Capital Investment Trust, which will hold \$75 million in sales, corporate income and insurance premium tax credits to secure private investments in the Florida Opportunity Fund.

The Management Corporation is charged with:

- Selecting an early stage venture capital investment fund allocation manager;

- Negotiating the terms of a contract with the venture capital investment fund allocation manager;
- Executing the contract with the selected venture capital investment fund allocation manager on behalf of the Florida Opportunity Fund;
- Managing the business affairs of the Florida Opportunity Fund such as accounting, audit, insurance, and related requirements;
- Receiving investment returns from the Florida Opportunity Fund; and
- Reinvesting the investment returns in the Florida Opportunity Fund in order to provide additional venture capital investments in Florida.

### Effect of Proposes Changes

The bill creates a public records exemption for certain information and trade secrets relating to the Florida Capital Formation Act created by HB 1467. Specifically, the bill makes the following information confidential and exempt<sup>1</sup> from s. 119.07(1), F.S. and s. 24(a), Art. I of the State Constitution:

- Trade secrets, as defined in the Uniform Trade Secrets Act,<sup>2</sup> held by the Florida Opportunity Fund and the Florida Opportunity Fund Management Corporation;
- Tax identification numbers;
- Analyses of gross receipts;
- Amount of taxes paid;
- Amount of capital investment;
- Amount of employee wages paid; and
- Detailed documentation to substantiate performance information included in portfolio data pertaining to specific companies within the portfolios of venture capital funds receiving capital investment from the Florida Opportunity Fund.

The bill provides for future review and repeal of the exemption on October 2, 2011, provides a public necessity statement, and provides an effective date contingent on the passage of HB 1467 or similar legislation.

### C. SECTION DIRECTORY:

Section 1. Creates s. 288.96275, F.S., creating a public records exemption for information relating to the Florida Capital Formation Act.

Section 2. Provides a public necessity statement.

Section 3. Provides a July 1, 2006 effective date contingent on the passage of HB 1467 or similar legislation.

## **II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT**

### A. FISCAL IMPACT ON STATE GOVERNMENT:

#### 1. Revenues:

This bill does not create, modify, amend, or eliminate a state revenue source.

<sup>1</sup> There is a difference between information and records that the Legislature has designated exempt from public disclosure and those the Legislature has deemed confidential and exempt. Information and records classified exempt from public disclosure are permitted to be disclosed under certain circumstances. See *City of Riviera Beach v. Barfield*, 642 So. 2d 1135 (Fla. 4th DCA 1994); *Williams v. City of Minneola*, 575 So. 2d 687 (Fla. 5th DCA 1991). If the Legislature designates certain information and records confidential and exempt from public disclosure, such information and records may not be released by the records custodian to anyone other than the persons or entities specifically designated in the statutory exemption. See *Attorney General Opinion 85-62*, August 1, 1985.

<sup>2</sup> Chapter 688, F.S.; see s. 688.002, F.S.

2. Expenditures:

See Fiscal Comments.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

This bill does not create, modify, amend, or eliminate a local revenue source.

2. Expenditures:

See Fiscal Comments.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

The bill likely could create a fiscal impact on state and local governments, because staff responsible for complying with public records requests will require training relating to the newly created public records exemption. In addition, state and local governments could incur costs associated with redacting the confidential and exempt information prior to releasing a record.

### III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

The bill does not require counties or municipalities to spend funds or to take an action requiring the expenditure of funds. The bill does not reduce the percentage of a state tax shared with counties or municipalities. The bill does not reduce the authority that municipalities have to raise revenue.

2. Other:

Vote Requirement

Article I, s. 24(c) of the Florida Constitution, requires a two-thirds vote of the members present and voting for passage of a newly created public records or public meetings exemption. The bill creates a public records exemption. Thus, it requires a two-thirds vote for passage.

Public Necessity Statement

Article I, s. 24(c) of the Florida Constitution, requires a statement of public necessity (public necessity statement) for a newly created public records or public meetings exemption. The bill creates a public records exemption. Thus, it includes a public necessity statement.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

Other Comments: Vagueness Issue

Lines 31 through 37 of the CS are not clearly defined and may not give appropriate guidance as to the specific kinds of information intended to be excluded from public records. In particular, the information



included in “the amount of capital investment” and “the detailed documentation to substantiate such performance information included in portfolio data pertaining to specific companies within portfolios of venture capital funds receiving investment...” is unclear and should be further defined.

#### **IV. AMENDMENTS/COMMITTEE SUBSTITUTE & COMBINED BILL CHANGES**

The Economic Development, Trade and Banking Committee adopted a strike-all amendment to the bill on March 30, 2006. The amendment removed references to the exemption of social security numbers, which are already exempted from public records under ch. 119, F.S., revised the references to the definition of “trade secret” as it is defined in s. 688.002, F.S., and made related technical clarifying and conforming changes.

HB 1469

2006  
CS

CHAMBER ACTION

The Economic Development, Trade & Banking Committee recommends  
the following:

**Council/Committee Substitute**

Remove the entire bill and insert:

A bill to be entitled

An act relating to public records; creating s. 288.96275,  
F.S.; providing an exemption from public records  
requirements for information held by the Florida  
Opportunity Fund that is a trade secret; providing an  
exemption from public records requirements for tax  
identification numbers, analyses of gross receipts, amount  
of taxes paid, amount of capital investment, amount of  
employee wages paid, and detailed documentation to  
substantiate such performance information included in  
portfolio data pertaining to specific companies within the  
portfolios of venture capital funds receiving investment  
from the Florida Opportunity Fund; providing for review  
and repeal; providing a statement of public necessity;  
providing a contingent effective date.

Be It Enacted by the Legislature of the State of Florida:

Page 1 of 4

HB 1469

2006  
CS

24  
25 Section 1. Section 288.96275, Florida Statutes, is created  
26 to read:

27 288.96275 Trade secret information; identification and  
28 performance information; public records exemption.--A trade  
29 secret, as defined in s. 688.002, held by the Florida  
30 Opportunity Fund is confidential and exempt from s. 119.07(1)  
31 and s. 24(a), Art. I of the State Constitution. Tax  
32 identification numbers, analyses of gross receipts, the amount  
33 of taxes paid, the amount of capital investment, the amount of  
34 employee wages paid, and the detailed documentation to  
35 substantiate such performance information included in portfolio  
36 data pertaining to specific companies within the portfolios of  
37 venture capital funds receiving investment from the Florida  
38 Opportunity Fund are confidential and exempt from s. 119.07(1)  
39 and s. 24(a), Art. I of the State Constitution. This section is  
40 subject to the Open Government Sunset Review Act in accordance  
41 with s. 119.15 and shall stand repealed on October 2, 2011,  
42 unless reviewed and saved from repeal through reenactment by the  
43 Legislature.

44 Section 2. The Legislature finds that it is a public  
45 necessity that a trade secret, as defined in the Uniform Trade  
46 Secrets Act, held by the Florida Opportunity Fund be held  
47 confidential and exempt from s. 119.07(1), Florida Statutes, and  
48 s. 24(a), Art. I of the State Constitution. In addition, the  
49 Legislature finds that it is a public necessity that tax  
50 identification numbers, analyses of gross receipts, amount of  
51 taxes paid, amount of capital investment, amount of employee

HB 1469

2006  
CS

52 wages paid, and detailed documentation to substantiate such  
53 performance information included in portfolio data pertaining to  
54 specific companies within the portfolios of venture capital  
55 funds receiving investment from the Florida Opportunity Fund be  
56 held confidential and exempt from s. 119.07(1), Florida  
57 Statutes, and s. 24(a), Art. I of the State Constitution. The  
58 disclosure of information concerning businesses that is obtained  
59 through the administration of the Florida Opportunity Fund under  
60 ss. 288.9621-288.9628, Florida Statutes, the "Florida Capital  
61 Formation Act," could injure a business in the marketplace by  
62 providing its competitors with detailed insights into the  
63 financial status and the strategic plans of the business,  
64 thereby diminishing the advantage that the business maintains  
65 over those that do not possess such information. Without this  
66 exemption, private sector businesses, whose records generally  
67 are not required to be open to the public, might refrain from  
68 participating in the economic development program, and thus  
69 would not be able to use the incentives available under the  
70 program. If a business were unable to use the incentives, the  
71 business might choose not to invest venture capital in the State  
72 of Florida, depriving the state and the public of the potential  
73 economic benefits associated with such investment activities in  
74 this state. The harm to businesses in the marketplace and to the  
75 effective administration of the economic development program  
76 caused by the public disclosure of such information far  
77 outweighs the public benefits derived from its release.

HB 1469


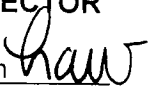
2006  
CS

78           Section 3.   This act shall take effect July 1, 2006, if  
79   House Bill 1467 or similar legislation is adopted in the same  
80   legislative session or an extension thereof and becomes law.



## HOUSE OF REPRESENTATIVES STAFF ANALYSIS

**BILL #:** PCS for HB 1563 Public Records  
**SPONSOR(S):** Governmental Operations Committee  
**TIED BILLS:** IDEN./SIM. BILLS: CS/SB 2366

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
Orig. Comm.: Governmental Operations Committee		Mitchell 	Williamson 
1) _____	_____	_____	_____
2) _____	_____	_____	_____
3) _____	_____	_____	_____
4) _____	_____	_____	_____
5) _____	_____	_____	_____

### SUMMARY ANALYSIS

The bill further delays, until January 1, 2008, the requirement for the clerk of the circuit court and the county recorder to keep complete bank account, debit, charge, and credit card numbers exempt and to keep social security numbers confidential and exempt, without any person having to request redaction.

The bill shields the clerk of the circuit court and county recorders from liability for the inadvertent release of confidential and exempt social security numbers or exempt bank account, debit, charge, or credit card numbers, in certain records filed on or before January 1, 2008.

The bill requires any county recorder who accepts or stores official records in an electronic format to use his or her best efforts to redact all social security numbers or complete bank account, debit, charge, or credit card numbers from electronic copies of the official record. The bill declares that the use of an automated program for redaction constitutes the best effort and complies with the public records exemption requirements.

The bill makes a number of stylistic, but not substantive changes to the social security number exemption.

The bill does not appear to create, modify, or eliminate rulemaking authority.

The bill does not appear to have an impact on state or local government revenues, but may have a minimal fiscal impact on the expenditures of state and local governments for implementation.

## FULL ANALYSIS

### I. SUBSTANTIVE ANALYSIS

#### A. HOUSE PRINCIPLES ANALYSIS:

Provide limited government – The bill shields the clerk of the circuit court or county recorder from liability for the inadvertent release of certain confidential and exempt information.

#### B. EFFECT OF PROPOSED CHANGES:

##### Access to Public Records

Access to the public records of any public body is a right provided by Article 1, section 24(a) of the Florida Constitution:

Every person has the right to inspect or copy any public record made or received in connection with the official business of any public body, officer, or employee of the state, or persons acting on their behalf, except with respect to records exempted pursuant to this section or specifically made confidential by this Constitution

Section 119.07(1), Florida Statutes, provides further implementation of this right:

Every person who has custody of a public record shall permit the record to be inspected and copied by any person desiring to do so, at any reasonable time, under reasonable conditions, and under supervision by the custodian of the public records.<sup>1</sup>

##### Requirements for Public Records Exemptions

The Legislature may limit the right of the public to inspect or copy any public record by creating an exemption by general law.<sup>2</sup> This general law must “state with specificity the public necessity justifying the exemption” and be “no broader than necessary to accomplish the stated purpose of the law.”<sup>3</sup> The Legislature has created numerous public records exemptions.

##### Public Records Exemptions for Social Security Numbers and Account Information

In 2002, the Legislature created a public records exemption for all social security numbers held by an agency<sup>4</sup> that did not have an agency-specific exemption for social security numbers.<sup>5</sup> In 2002, the Legislature also recreated<sup>6</sup> a public records exemption for bank account numbers, debit, charge and credit card numbers held by an agency.<sup>7</sup> The Legislature also created a number of exceptions for these exemptions. One of those exceptions related to court records; another exception related to documents presented to the county recorder for recording in the official records of the county.

---

<sup>1</sup> Fla. Stat. § 119.07(1)(a) (2005).

<sup>2</sup> Fla. Const. art. 1, § 24.

<sup>3</sup> *Id.*

<sup>4</sup> Fla. Stat. § 119.011(2) (2005) (defining “agency” as any state, county, district, authority, or municipal officer, department, division, board, bureau, commission, or other separate unit of government created or established by law including, for the purposes of this chapter, the Commission on Ethics, the Public Service Commission, and the Office of Public Counsel, and any other public or private agency, person, partnership, corporation, or business entity acting on behalf of any public agency”).

<sup>5</sup> Ch. 2002-256, Laws of Fla.

<sup>6</sup> A previously existing exemption repealed on October 1, 2001. See Fla. Stat. § 119.07(3)(z) (2000).

<sup>7</sup> Ch. 2002-257, Laws of Fla.



## Court Records and Official Records Exceptions

In 2002, the Legislature allowed social security numbers and complete bank account, debit, charge, or credit card numbers, which were included in a court file, to continue to be included as part of the court record that is available for public inspection and copying until January 1, 2006.<sup>8</sup> The Legislature provided the ability for a person to request the redaction of this information.<sup>9</sup>

In 2002, the Legislature also permitted social security numbers and complete bank account, debit, charge, or credit card numbers, which were included in a document presented to the county recorder for recording in the official records of the county, to continue to be included as part of the court record that is available for public inspection and copying until January 1, 2006.<sup>10</sup> The Legislature also prohibited any person who prepares or files a document to be recorded in the official records by the county recorder from including a person's social security number or complete bank account, debit, charge, or credit card number in that document unless expressly required by law.<sup>11</sup>

In 2005, the Legislature delayed until January 1, 2007, the requirements for the clerk of the circuit court and the county recorder to keep complete bank account, debit, charge, and credit card numbers exempt and to keep social security numbers confidential and exempt, without any person having to request redaction.<sup>12</sup>

### Further Delay

The bill further delays, until January 1, 2008, the requirement for the clerk of the circuit court and the county recorder to keep complete bank account, debit, charge, and credit card numbers exempt and to keep social security numbers confidential and exempt, without any person having to request redaction.

### Liability Shields

The bill shields the clerk of the circuit court from liability for the inadvertent release of confidential and exempt social security numbers or exempt bank account, debit, charge, or credit card numbers, which were in court records filed with the clerk of the circuit court on or before January 1, 2008, and which were unknown to the clerk of the circuit court.

The bill also shields the county recorder from liability for the inadvertent release of confidential and exempt social security numbers or exempt bank account, debit, charge, or credit card numbers, which were filed with the county recorder on or before January 1, 2008.

### County Recorders and Electronic Records

The bill requires any county recorder who accepts or stores official records in an electronic format to use his or her best efforts to redact all social security numbers or complete bank account, debit, charge, or credit card numbers from electronic copies of the official record. The bill declares that the use of an automated program for redaction constitutes the best effort and complies with the public records exemption requirements.

---

<sup>8</sup> Ch. 2002-391, Laws of Fla. This exception was originally created as paragraph (ff) of subsection (3) of section 119.07, Florida Statutes. This exception was later paragraph (gg) of subsection (6) of section 119.07, Florida Statutes.

<sup>9</sup> Fla. Stat. § 119.071(5)(a)7.d. (2005) (requiring the holder of the social security number or complete bank account, debit, charge, or credit card number, or the holder's attorney or legal guardian, to submit a signed, legibly written request that is delivered by mail, facsimile, electronic transmission, or in person to the clerk of the circuit court and specifies the case name, case number, document heading, and page number).

<sup>10</sup> Ch. 2002-391, Laws of Fla., *supra* note 8.

<sup>11</sup> *Id.*

<sup>12</sup> Ch. 2005-236, Laws of Fla., § 41. See also ch. 2005-251, Laws of Fla., § 24 (which transferred and redesignated paragraph (gg) of subsection (6) of section 119.07, Florida Statutes, to section 119.071(5)(a), Florida Statutes).

### Stylistic Changes

The bill makes a number of stylistic, but not substantive changes to the social security number exemption.<sup>13</sup>

#### C. SECTION DIRECTORY:

- Section 1: Amends section 119.071, Florida Statutes, to limit the liability of the clerk of the circuit court and the county recorder; to require the clerk of the circuit court to make certain notices; and to require best efforts in redaction.
- Section 2: Reenacting section 1007.35(8)(b), Florida Statutes, to incorporate amendments.
- Section 3: Providing an effective date of July 1, 2006.

## **II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT**

#### A. FISCAL IMPACT ON STATE GOVERNMENT:

##### 1. Revenues:

This bill does not appear to have a fiscal impact on state government revenues.

##### 2. Expenditures:

This bill may have a fiscal impact on state government expenditures because staff responsible for complying with public records requests will require training relating to the newly created public records exemption.

#### B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

##### 1. Revenues:

This bill does not appear to have a fiscal impact on local government revenues.

##### 2. Expenditures:

This bill may have a fiscal impact on local government expenditures because the staffs of the clerk of the circuit court or county recorder who are responsible for complying with public records requests will require training relating to the newly created public records exemption. There will also be costs to notify the public of these changes.

#### C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

This bill does not appear to have a direct economic impact on the private sector.

#### D. FISCAL COMMENTS:

None.

## **III. COMMENTS**

#### A. CONSTITUTIONAL ISSUES:

##### 1. Applicability of Municipality/County Mandates Provision:

---

<sup>13</sup> One example is "shall not" to "may not."  
STORAGE NAME: pcs1563.GO.doc  
DATE: 4/13/2006

This bill does not appear to reduce the percentage of a state tax shared with counties or municipalities. This bill does not appear to reduce the authority that counties or municipalities have to raise revenue. Although this bill may require counties, through the clerks of the circuit court or county recorders, to spend funds or to take an action requiring the expenditure of funds, the amount of this expenditure is expected to be fiscally insignificant.

2. Other:

There do not appear to be any other constitutional issues.

B. RULE-MAKING AUTHORITY:

The bill does not appear to create, modify, or eliminate rulemaking authority.

C. DRAFTING ISSUES OR OTHER COMMENTS:

Drafting Issue: Unknown to the Clerk of the Circuit Court

Rather than using the phrase "unknown to the Clerk of the Circuit Court," the sponsor of the originally filed bill may wish to consider referencing the request for redaction.

**IV. AMENDMENTS/COMMITTEE SUBSTITUTE & COMBINED BILL CHANGES**

Not applicable.

1563

ORIGINAL

2006  
CS

CHAMBER ACTION

The Governmental Operations Committee recommends the following:

**Council/Committee Substitute**

Remove the entire bill and insert:

A bill to be entitled

An act relating to public records; amending s. 119.071, F.S.; providing that the clerk of the circuit court has no liability for the inadvertent release of certain confidential or exempt information; requiring the clerk of the circuit court to provide notice regarding the inclusion of a social security number or a complete bank account, debit, charge, or credit card number in a court document or copy of a court document; requiring the county recorder to use his or her best efforts to redact all social security numbers or complete bank account, debit, charge, or credit card numbers from electronic copies of official records documents; providing that the county recorder is not liable for the inadvertent release of certain confidential or exempt information; reenacting s. 1007.35(8)(b), F.S., relating to access to information necessary to evaluate the effectiveness of delivered services from the Florida Partnership for Minority and Underrepresented Student Achievement, to incorporate the

1563

ORIGINAL

2006  
CS

amendments made to s. 119.071, F.S., in a reference  
thereto; providing an effective date.

Be It Enacted by the Legislature of the State of Florida:

Section 1. Paragraph (a) of subsection (5) of section  
119.071, Florida Statutes, is amended to read:

119.071 General exemptions from inspection or copying of  
public records.--

(5) OTHER PERSONAL INFORMATION.--

(a)1. The Legislature acknowledges that the social  
security number was never intended to be used for business  
purposes but was intended to be used solely for the  
administration of the federal Social Security System. The  
Legislature is further aware that over time this unique numeric  
identifier has been used extensively for identity verification  
purposes and other legitimate consensual purposes. The  
Legislature is also cognizant of the fact that the social  
security number can be used as a tool to perpetuate fraud  
against a person and to acquire sensitive personal, financial,  
medical, and familial information, the release of which could  
cause great financial or personal harm to an individual. The  
Legislature intends to monitor the commercial use of social  
security numbers held by state agencies in order to maintain a  
balanced public policy.

2. An agency may ~~shall~~ not collect an individual's social  
security number unless authorized by law to do so or unless the  
collection of the social security number is otherwise imperative

1563

ORIGINAL

2006  
CS

52 for the performance of that agency's duties and responsibilities  
53 as prescribed by law. Social security numbers collected by an  
54 agency must be relevant to the purpose for which collected and  
55 may ~~shall~~ not be collected until and unless the need for social  
56 security numbers has been clearly documented. An agency that  
57 collects social security numbers shall also segregate that  
58 number on a separate page from the rest of the record, or as  
59 otherwise appropriate, in order that the social security number  
60 be more easily redacted, if required, pursuant to a public  
61 records request. An agency collecting a person's social security  
62 number shall, upon that person's request, at the time of or  
63 prior to the actual collection of the social security number by  
64 that agency, provide that person with a statement of the purpose  
65 or purposes for which the social security number is being  
66 collected and used. Social security numbers collected by an  
67 agency may ~~shall~~ not be used by that agency for any purpose  
68 other than the purpose stated. Social security numbers collected  
69 by an agency before ~~prior to~~ May 13, 2002, shall be reviewed for  
70 compliance with this subparagraph. If the collection of a social  
71 security number before ~~prior to~~ May 13, 2002, is found to be  
72 unwarranted, the agency shall immediately discontinue the  
73 collection of social security numbers for that purpose.

74 3. Effective October 1, 2002, all social security numbers  
75 held by an agency are confidential and exempt from s. 119.07(1)  
76 and s. 24(a), Art. I of the State Constitution. This exemption  
77 applies to all social security numbers held by an agency before,  
78 on, or after the effective date of this exemption.

1563

ORIGINAL

2006  
CS

79           4. Social security numbers may be disclosed to another  
80 governmental entity or its agents, employees, or contractors if  
81 disclosure is necessary for the receiving entity to perform its  
82 duties and responsibilities. The receiving governmental entity  
83 and its agents, employees, and contractors shall maintain the  
84 confidential and exempt status of the ~~such~~ numbers.

85           5. An agency may ~~shall~~ not deny a commercial entity  
86 engaged in the performance of a commercial activity as defined  
87 in s. 14.203 or its agents, employees, or contractors access to  
88 social security numbers, provided the social security numbers  
89 will be used only in the normal course of business for  
90 legitimate business purposes, and provided the commercial entity  
91 makes a written request for social security numbers, verified as  
92 provided in s. 92.525, legibly signed by an authorized officer,  
93 employee, or agent of the commercial entity. The verified  
94 written request must contain the commercial entity's name,  
95 business mailing and location addresses, business telephone  
96 number, and a statement of the specific purposes for which it  
97 needs the social security numbers and how the social security  
98 numbers will be used in the normal course of business for  
99 legitimate business purposes. The aggregate of these requests  
100 shall serve as the basis for the agency report required in  
101 subparagraph 8. An agency may request any other information  
102 reasonably necessary to verify the identity of the entity  
103 requesting the social security numbers and the specific purposes  
104 for which the ~~such~~ numbers will be used; however, an agency has  
105 no duty to inquire beyond the information contained in the  
106 verified written request. A legitimate business purpose includes

1563

ORIGINAL

2006  
CS

107 verification of the accuracy of personal information received by  
108 a commercial entity in the normal course of its business; use in  
109 a civil, criminal, or administrative proceeding; use for  
110 insurance purposes; use in law enforcement and investigation of  
111 crimes; use in identifying and preventing fraud; use in  
112 matching, verifying, or retrieving information; and use in  
113 research activities. A legitimate business purpose does not  
114 include the display or bulk sale of social security numbers to  
115 the general public or the distribution of such numbers to any  
116 customer that is not identifiable by the distributor.

117         6. Any person who makes a false representation in order to  
118 obtain a social security number pursuant to this paragraph, or  
119 any person who willfully and knowingly violates this paragraph,  
120 commits a felony of the third degree, punishable as provided in  
121 s. 775.082 or s. 775.083. Any public officer who violates this  
122 paragraph is guilty of a noncriminal infraction, punishable by a  
123 fine not exceeding \$500. A commercial entity that provides  
124 access to public records containing social security numbers in  
125 accordance with this paragraph is not subject to the penalty  
126 provisions of this subparagraph.

127         7.a. On or after October 1, 2002, a person preparing or  
128 filing a document to be recorded in the official records by the  
129 county recorder as provided for in chapter 28 may not include  
130 any person's social security number in that document, unless  
131 otherwise expressly required by law. If a social security number  
132 is or has been included in a document presented to the county  
133 recorder for recording in the official records of the county  
134 before, on, or after October 1, 2002, it may be made available



1563

ORIGINAL

2006  
CS

135 as part of the official record available for public inspection  
136 and copying.

137       b. Any person, or his or her attorney or legal guardian,  
138 has the right to request that a county recorder remove, from an  
139 image or copy of an official record placed on a county  
140 recorder's publicly available Internet website or a publicly  
141 available Internet website used by a county recorder to display  
142 public records or otherwise made electronically available to the  
143 general public by such recorder, his or her social security  
144 number contained in that official record. The ~~Such~~ request must  
145 be made in writing, legibly signed by the requester and  
146 delivered by mail, facsimile, or electronic transmission, or  
147 delivered in person, to the county recorder. The request must  
148 specify the identification page number that contains the social  
149 security number to be redacted. The county recorder has no duty  
150 to inquire beyond the written request to verify the identity of  
151 a person requesting redaction. A fee may ~~shall~~ not be charged  
152 for the redaction of a social security number pursuant to such  
153 request.

154       c. A county recorder shall immediately and conspicuously  
155 post signs throughout his or her offices for public viewing and  
156 shall immediately and conspicuously post, on any Internet  
157 website or remote electronic site made available by the county  
158 recorder and used for the ordering or display of official  
159 records or images or copies of official records, a notice  
160 stating, in substantially similar form, the following:

161       (I) On or after October 1, 2002, any person preparing or  
162 filing a document for recordation in the official records may

1563

ORIGINAL

2006  
CS

not include a social security number in such document, unless required by law.

(II) Any person has a right to request a county recorder to remove, from an image or copy of an official record placed on a county recorder's publicly available Internet website or on a publicly available Internet website used by a county recorder to display public records or otherwise made electronically available to the general public, any social security number contained in an official record. Such request must be made in writing and delivered by mail, facsimile, or electronic transmission, or delivered in person, to the county recorder. The request must specify the identification page number that contains the social security number to be redacted. A No-fee may not ~~will~~ be charged for the redaction of a social security number pursuant to such a request.

d. Until January 1, 2008 ~~2007~~, if a social security number, made confidential and exempt pursuant to this paragraph, or a complete bank account, debit, charge, or credit card number made exempt pursuant to paragraph (b) is or has been included in a court file, such number may be included as part of the court record available for public inspection and copying unless redaction is requested by the holder of such number, or by the holder's attorney or legal guardian, in a signed, legibly written request specifying the case name, case number, document heading, and page number. The request must be delivered by mail, facsimile, electronic transmission, or in person to the clerk of the circuit court. The clerk of the circuit court does not have a duty to inquire beyond the written request to verify the

1563

ORIGINAL

2006  
CS

191 identity of a person requesting redaction. A fee may not be  
192 charged for the redaction of a social security number or a bank  
193 account, debit, charge, or credit card number pursuant to such  
194 request. The clerk of the circuit court has no liability for the  
195 inadvertent release of confidential and exempt social security  
196 numbers or exempt bank account, debit, charge, or credit card  
197 numbers, unknown to the clerk of the circuit court in court  
198 records filed with the clerk of the circuit court on or before  
199 January 1, 2008.

200 e. Any person who prepares or files a document to be  
201 recorded in the official records by the county recorder as  
202 provided in chapter 28 may not include a person's social  
203 security number or complete bank account, debit, charge, or  
204 credit card number in that document unless otherwise expressly  
205 required by law. Until January 1, 2008 ~~2007~~, If a social  
206 security number or a complete bank account, debit, charge, or  
207 credit card number is or has been included in a document  
208 presented to the county recorder for recording in the official  
209 records of the county, such number may be made available as part  
210 of the official record available for public inspection and  
211 copying. Any person, or his or her attorney or legal guardian,  
212 may request that a county recorder remove from an image or copy  
213 of an official record placed on a county recorder's publicly  
214 available Internet website, or a publicly available Internet  
215 website used by a county recorder to display public records  
216 outside the office or otherwise made electronically available  
217 outside the county recorder's office to the general public, his  
218 or her social security number or complete account, debit,

1563

ORIGINAL

2006  
CS

charge, or credit card number contained in that official record. Such request must be legibly written, signed by the requester, and delivered by mail, facsimile, electronic transmission, or in person to the county recorder. The request must specify the identification page number of the document that contains the number to be redacted. The county recorder does not have a duty to inquire beyond the written request to verify the identity of a person requesting redaction. A fee may not be charged for redacting such numbers. If the county recorder accepts or stores official records in an electronic format, the county recorder must use his or her best efforts to redact all social security numbers or complete bank account, debit, charge, or credit card numbers from electronic copies of the official record. The use of an automated program for redaction shall be deemed the best effort and complies with the requirements of this sub-subparagraph. The county recorder is not liable for the inadvertent release of confidential and exempt social security numbers or exempt bank account, debit, charge or credit card numbers, filed with the county recorder on or before January 1, 2008.

f. Subparagraphs 2. and 3. do not apply to the clerks of the court or the county recorder with respect to circuit court records and official records.

g. On January 1, 2008 ~~2007~~, and thereafter, the clerk of the circuit court and the county recorder must keep complete bank account, debit, charge, and credit card numbers exempt as provided for in paragraph (b), and must keep social security

1563

ORIGINAL

2006  
CS

numbers confidential and exempt as provided for in subparagraph 3., without any person having to request redaction.

8. Beginning January 31, 2004, and each January 31 thereafter, every agency must file a report with the Secretary of State, the President of the Senate, and the Speaker of the House of Representatives listing the identity of all commercial entities that have requested social security numbers during the preceding calendar year and the specific purpose or purposes stated by each commercial entity regarding its need for social security numbers. If no disclosure requests were made, the agency shall so indicate.

9. Any affected person may petition the circuit court for an order directing compliance with this paragraph.

10. This paragraph does not supersede any other applicable public records exemptions existing prior to May 13, 2002, or created thereafter.

11. This paragraph is subject to the Open Government Sunset Review Act in accordance with s. 119.15 and shall stand repealed October 2, 2007, unless reviewed and saved from repeal through reenactment by the Legislature.

Section 2. For the purpose of incorporating the amendments made by this act to section 119.071, Florida Statutes, in a reference thereto, paragraph (b) of subsection (8) of section 1007.35, Florida Statutes, is reenacted to read:

1007.35 Florida Partnership for Minority and Underrepresented Student Achievement.--

(8)

1563

ORIGINAL

2006  
CS

(b) The department shall contribute to the evaluation process by providing access, consistent with s. 119.071(5)(a), to student and teacher information necessary to match against databases containing teacher professional development data and databases containing assessment data for the PSAT/NMSQT, SAT, AP, and other appropriate measures. The department shall also provide student-level data on student progress from middle school through high school and into college and the workforce, if available, in order to support longitudinal studies. The partnership shall analyze and report student performance data in a manner that protects the rights of students and parents as required in 20 U.S.C. s. 1232g and s. 1002.22.

Section 3. This act shall take effect July 1, 2006.